

FISCAL NOTE
Requested by Legislative Council
02/11/2015

Amendment to: SB 2322

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$175,127,000			
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2322 increases cigarette and tobacco excise tax rates.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of engrossed SB 2322 changes the definition of 'other tobacco products' to include e-cigarettes and components. Section 2 of engrossed SB 2322 increases the tobacco excise tax rates: (1) from 28% to 50% of the wholesale purchase price on other tobacco products, (2) from \$.60 to \$2.72 per ounce for snuff, and (3) from \$.16 to \$.73 per ounce for chewing tobacco. Section 5 of engrossed SB 2322 increases the tax from \$.44 to \$2.00 per package of 20 cigarettes. If enacted, these tax increases are expected to increase total cigarette and tobacco tax revenue by an estimated \$175.127 million in the 2015-17 biennium. This estimate assumes a drop in cigarette consumption of approximately 16% and a drop in consumption of other tobacco products of 15%. NOTE: In a previous fiscal note on (original) SB 2322, the cigarette tax was inadvertently calculated as \$1.54 per pack, rather than the \$2.00 actually contained in the bill. The preparer of the fiscal note apologizes for this calculation error.

E-cigs and their components are not included in this fiscal note as consumption and wholesale cost information is not available at this time.

The bill distributes all additional revenue to the state general fund.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 02/14/2015

FISCAL NOTE
Requested by Legislative Council
01/21/2015

Bill/Resolution No.: SB 2322

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$121,700,000			
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2322 increases cigarette and tobacco excise tax rates.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 of SB 2322 increases the tobacco excise tax rates: (1) from 28% to 50% of the wholesale purchases price on other tobacco products, (2) from \$.60 to \$2.10 per ounce for snuff, and (3) from \$.16 to \$.56 per ounce for chewing tobacco. Section 5 of SB 2322 increases the tax from \$.44 to \$2.00 per package of 20 cigarettes. If enacted, these tax increases are expected to increase total cigarette and tobacco tax revenue by an estimated \$121.7 million in the 2015-17 biennium. This estimate assumes a drop in cigarette consumption of approximately 16% and a drop in consumption of other tobacco products of 15%.

The bill distributes all additional revenue to the state general fund.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 02/02/2015

2015 SENATE FINANCE AND TAXATION

SB 2322

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB2322
2/4/2015
Job #23199

- Subcommittee
 Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Relating to the excise taxes on tobacco products and the cigarette tax; relating to the exemption from the tobacco tax for products given to the veterans' home and the state hospital.

Minutes:

Attachment #1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

Chairman Cook opened the hearing on SB2322.

Senator Tim Mathern, sponsor, introduced the bill
I introduced SB2322 to save lives and to reduce health care costs. **(Attachment #1)**

Proposed amendment (Attachment #2)

Chairman Cook -- Will the amendments change the fiscal note?

Senator Mathern-- Originally it was unclear as to whether or not the amendments included these other products. This clarifies that they do include them. If anything, the fiscal note might go up. It will not go down.

Dr. Eric Johnson, Associate Professor, University of North Dakota, School of Medicine and Health Sciences;

President, Tobacco Free North Dakota (Attachment #3)

My expertise is what works in keeping youth from picking up cigarettes in the first place and to help people who are already smoking to quit. We need good preventive strategy in health care policy to save future health care costs. Senator Mathern has statistics that are thought to be very accurate. They are compiled from a variety of reputable sources and if we want to save money over the next couple of decades in health care, this is a prudent and reasonable thing to do.

Chairman Cook -- Did you say Quit North Dakota has 35 to 35%? That's a lot higher than what this is going to accomplish. What can we do to get more to go to Quit North Dakota?

Dr. Johnson -- We think policy like this drives people to appropriate resources. Our long-range planning is to par people who need to quit with these resources. The populations this really reaches are lower socio-economic classes. People who made less than \$25,000/year in North Dakota smoke at a 35% rate right now. The general population is a little under 20. Youth smoking, we anticipate, will be reduced by 15-20% with this measure. They are not going to reach out to a quit resource. They just need to not start in the first place.

Senator Triplett -- Help us understand what the preventable health costs are for end-of-life care for someone who comes up with lung cancer?

Dr. Johnson -- This is going to depend upon the condition contracted. No. 1 killer for smokers is heart disease and stroke. If you have 2 50 year olds and 1 has heart disease and 1 doesn't, the one that doesn't spends about \$2,000 to \$3,000/year in health care. The 1 that does spends about \$13,000. Lung cancer treatment runs in the neighborhood of about \$13,000 to \$15,000/year for treatment. The biggest fiscal components of this is the current cohort of youth in North Dakota that would not start, over the course of their lifetime that would be at least hundreds of millions of dollars. North Dakota spends about \$247 million a year in direct health care costs. If we try to piece together all these fiscal pieces, from a fiscal conservancy point of view, it's a pretty good strategy.

Deb Knuth, Director, Government Relations, American Cancer Society in North Dakota (Attachment #4)

In support of SB2322

Katie Fitzsimmons, Communications Director, North Dakota Medical Association. (Attachment #5)

In support of SB2322

Senator Triplett -- This question might be for Ms. Knuth but maybe you can answer it: on the survey the question was asked "would you favor or oppose a proposal that would raise the state tobacco tax"? Do you know whether there is general acceptance of a substantial increase or a lesser increase?

Deb Knuth -- We have recently handed out to all the house and senate members a packet that is labeled "raise it for health" and the entire survey is part of that. We did ask, specifically, how much the support was for a \$1 and \$1.50. There wasn't a significant difference in the public support.

Kristie Wolff, Program Manager, American Lung Association of North Dakota (Attachment #6)

Urged a do pass recommendation.

Senator Bekkedahl -- Dr. Johnson had indicated that our cessation programs and services were very well-funded and a high level program but in here we get a C on access to cessation services. What needs to occur to bring that category up in line with Dr. Johnson's testimony?

Kristy Wolff -- Getting an A on this is actually incredibly difficult. A C grade is not a bad grade on this. Under barriers to coverage, that's where they are noted.

**Keith Johnson, Administrator, Custer Health in Mandan
(Attachment #7)**

Introduces a resolution that the Custer Health Board passed in the last year which endorses legislative action to be taken to raise North Dakota's cigarette tax to a minimum of \$2.00/pack.

Terry Traynor, Association of Counties

A lot of times people think of counties as sheriffs, and jails and roads, but they are also public health. Our county commissioners from across the state had a discussion about this and many of them sit on their local county health district boards and they are in favor of this because they see the value to the state of North Dakota.

**Valerie Schoepf, Board member with Tobacco Free North Dakota, and Vice President for Bismarck Tobacco Free Coalition
(Attachment #8)**

In support of SB2322.

**June Herman, Regional Vice President, Advocacy for American Heart Association
(Attachment #9)**

Asking for a do pass recommendation. Also, support an amendment to address a portion of the new revenue to critical health care needs.

Megan Houn, Director of Government Relations, Blue Cross Blue Shield of North Dakota

We support the tax increase. A healthier pool is a better pool and a better bottom line for us.

**T.J. Jerke, Education & Advocacy, Tobacco Free North Dakota.
(Attachment #10)**

In support of SB2322

Senator Oehlke -- Do you smoke? Have you ever?

T.J. Jerke -- No, I have not ever.

Senator Bekkedahl -- All this testimony that we've heard, the question that comes to my mind relative to the Minnesota tax and the North Dakota tax and the reduction in smoking statistics for Minnesota, is there any statistical data showing how the western counties that border North Dakota and Minnesota have performed in those reductions as well or is it only state-wide data?

T.J. Jerke -- I believe the analysis and information put together by Minnesota breaks that down and I would be happy to provide that for you.

Senator Bekkedahl -- Can you get it to us?

T.J. Jerke -- Absolutely.

**Mike Rud, President, North Dakota Petroleum Marketers Association
(Attachments 11, 12 & 13)**

We stand here as 400 members of our association urging a do not pass recommendation on SB2322.

Senator Oehlke -- You have 400 members. Are any of them county commissioners?

Mike Rud -- I don't know.

Senator Oehlke -- I'm guessing that you've talked to all 400.

Mike Rud -- I've talked to a lot of our members but I can't say that I've talked to all 400 of them. We had this discussion at our general membership meeting at our trade show in October.

Senator Oehlke -- I'm guessing there probably are some county commissioners in your mix and maybe all 400 aren't necessarily in agreement. You've notice in the bill, Mike, that income generated from this is not designated toward anything specific.

Mike Rud -- I understand that.

Senator Oehlke -- I wanted to make sure that was understood. Do you smoke?

Mike Rud -- No.

Senator Oehlke -- Have you ever?

Mike Rud -- I was 6 years old and I was holding my grandpa's cigarette and I took a puff of it and that's the one and only time I've ever smoked.

Senator Oehlke -- So that was a good lesson for you. Would you recommend that lesson for everybody?

Mike Rud -- I would recommend that lesson for everybody.

Kelly Kaiser, owner of O.K. Distributing (Attachment #14)

North Dakota still has a great economy and increasing taxes on a specific group of citizens and business owners is not the right thing to do. Urge a do not pass on SB2322

Kelsey Eaton, Regional Manager of Infinite Vapor

We specialize in providing electronic cigarettes and high-end vapor supplies. 99% of our customer base are people quitting smoking. We oppose any amendments to make smoke-free and tobacco-free e-cigarettes and vapor products subject to North Dakota's other tobacco products tax. We sell anti-tobacco technology products. Adding a substantial tax

to these products reduces the availability of any alternative to combustible tobacco cigarettes. We do not support SB2322.

Senator Triplett -- Can you elaborate on what you know about what the FDA study. You indicated that they are continuing to study whether e-cigarettes should be considered an anti-smoking product. Is there an ongoing study and is there a timeline for it?

Kelsey Eaton -- Right now the FDA is still going through a period in which they are trying to regulate products and figure out their regulations for this vapor industry. I don't think there is an actual timeline going right now.

Adam Jones, AMCON Distributing (Attachment #15)
Opposed to SB2322.

Levi Schafer, Manager, Simonson Station Stores

I'm here to represent our company that does business throughout North Dakota and Minnesota. We have 14 stores in North Dakota and a couple in Minnesota. We do oppose this bill. Presents a letter written to legislators to put into perspective a Minnesotans take.
(Attachment #16)

Chairman Cook -- Indicates that he and the other committee members received the letter in an e-mail.

Jon Godfread, Greater North Dakota Chamber

We stand in opposition to SB2322. We oppose all business tax increases. We are talking about a massive increase on a legal product.
(Attachment #17)

Carol Two Eagle -- I am a traditional spiritual person of my people. I walk with the pipe. The pipe is holy. That's 24 hours a day, seven days a week, until I die. When you tax tobacco, you are taxing something that is essential for our religious practice and that is unconstitutional. We are the only group in North America, Indians, who require this material. Tobacco in our way is holy. It was created specifically by the great holy to carry every thought, wish and emotion that comes near it. I usually grow my own but my entire crop failed last year. I use from 8 to 15 pounds of tobacco in an average year. Now I have to buy tobacco and I'm being taxed on my religious practices. The only thing I can think of is some kind of form and many of our people have unenrolled or didn't enroll their children at all, so show your tribal ID isn't going to work. This needs to be addressed and I hope that we can work together and come up with an answer.

Allen Nygard, Representing the Three Affiliated Tribes of North Dakota -- I am not offering testimony in favor or opposed. Just a neutral point of clarification. I've heard several comments about unfair advantage being offered to reservations with an increase in this particular tax. I cannot speak for the Standing Rock Sioux Tribe nor can I speak for the Spirit Lake Nation, nor can I speak for the Turtle Mountain Band of Chippewa but I have been given the great honor to speak for my nation. We are in the process, right now, of instituting a tribal tobacco tax that will become effective, more than likely, in the next couple of months. That will provide double taxation, actually, and will be a very unfriendly

environment in terms of tobacco. We do have provisions that address what the lady just talked about on the spiritual side and traditional side as it relates to our spiritual leaders. But to assume that sovereign nations who have the power to tax, as they see fit and as they choose, will create an acrimonious environment is an unfair assumption. I can speak for our nation. We make every effort to try to mirror what the state of North Dakota is doing in terms of enforcement, as well as in terms of taxation. However, there are times when we cannot come to an agreement and, in the best interest of our nation, we have to act unilaterally and that is what we are doing at this time. I wanted to bring that point of clarification.

Senator Triplett -- I appreciate your testimony and your response to Ms. Two Eagle. Can you share with us how you have made exceptions for the spiritual use of tobacco? Can you send us a copy of what your exceptions are and how they are worded?

Allen Nygard -- We would be more than happy to share that with you. It's something that we always do in any of our deliberations. Any of the codes that we create always has that cultural component to it.

Chairman Cook closed the hearing on SB2322.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB2322
2/10/2015
Job #23598

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee work on SB2322

Minutes:

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Chairman Cook opened the committee work.

This is the smoking tax bill, and I think we have heard all the pros and cons when we had the testimony on this. We've heard reasons to pass it. We've heard reason not to. I think we all have our minds pretty well made up. Your wishes.

Senator Unruh -- I would move a do not pass on SB2322.

Seconded by Senator Laffen.

Senator Oehlke -- Do you think we would want to consider the amendment that Senator Mathern had initially proposed during his presentation?

Chairman Cook -- The amendment is on e-cigarettes? Is that the only one? If you would like to, we can do that. I look at e-cigarettes as I look at Nicorette gum or anything else, as a tool to quit smoking. We have a motion.

Senator Unruh -- I will withdraw my motion.

Senator Laffen withdrew his second.

Chairman Cook -- Someone want to move the amendment?

Senator Oehlke -- I would move the amendment 15.0769.03002.

Seconded by Senator Triplett.

Senator Triplett --The line in the amendment is whether or not it has been approved by the U.S. Food and Drug Administration for sale as a tobacco cessation product so I think it gives credibility to the work that the FDA does to study these things and one of the people who was opposing said that the FDA is taking information but it didn't sound like there was

any active study ongoing. If the FDA ever did take it up as a formal matter and approve it as a tobacco cessation product then, by the terms of this legislation, it would automatically be included.

Chairman Cook -- Do you think that what the FDA says has anything to do with people who buy them to help them quit smokin'? The first time I saw an e-cigarette I know the time and place I was at. It was on the west side of the capitol, a state employee was quitting smokin' using e-cigarettes.

Senator Triplett -- Whether or not an individual makes a decision, based on the FDA rules, I think it is logical for us, as state policy makers, to use the FDA.

Senator Oehlke -- The first time I saw one, you were puffing away on it at our committee party. It was a gift, by our committee, to you. And as I recall, you didn't like it that much.

Chairman Cook -- I do not. But I have them.

Senator Laffen -- Just to be clear on the amendment, as Senator Triplett was speaking, the amendment states that e-cigarettes will be taxed, unless the FDA decides that it is a quitting smoking device.

Senator Triplett -- Right.

Roll call on amendment 03002 to SB2322. 6-1-0.

We have before us now SB2322, as amended.

Senator Unruh moves a do not pass on SB2322, as amended.

Seconded by Senator Laffen.

Roll call vote do not pass on SB2322 3-4-0.

Senator Bekkedahl moves a do pass on SB2322 and rerefer.

Seconded by Senator Oehlke.

Roll call vote 4-3-0.

Carrier: Senator Dotzenrod.

February 2, 2015

1 of 2

TD
2/10/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2322

Page 1, line 10, after "up" insert "of."

Page 1, line 10, after "of" insert ", or derived from"

Page 1, line 10, after "part" insert ", which can be ingested in any way. "Other tobacco products" includes any product or device that contains nicotine and any separately sold component of such a product or device. "Other tobacco products" does not include a product that delivers nicotine for human consumption if that product has been approved by the United States food and drug administration for sale as a tobacco-cessation product"

Page 1, line 13, overstrike "**and**" and insert immediately thereafter a boldfaced underscored comma

Page 1, line 13, after "**tobacco**" insert "**, and other tobacco products**"

Page 1, line 13, overstrike "**Other**"

Page 1, line 14, overstrike "**tobacco products - Excise**" and insert immediately thereafter "**Snuff and chewing tobacco excise**"

Page 1, line 18, overstrike "and" and insert immediately thereafter an underscored comma

Page 1, line 18, after "tobacco" insert ", and other tobacco products"

Page 1, line 20, overstrike "or" and insert immediately thereafter an underscored comma

Page 1, line 20, after "tobacco" insert ", or other tobacco products"

Page 1, line 21, after the period insert "For cigars, pipe tobacco, or other tobacco products for which the tax commissioner is unable to readily identify the established price for which a manufacturer sells the cigars, pipe tobacco, or other tobacco products to a distributor, the excise tax shall be paid by the retailer and the "wholesale purchase price" means the price at which the retailer sells such product to a customer at the point of sale, exclusive of any discount or reduction."

Page 2, line 1, after "ten" insert "seventy-two"

Page 2, line 3, after "fifty-six" insert "seventy-three"

Page 2, line 5, remove the overstrike over "~~For purposes of this subsection, the tax on~~"

Page 2, line 5, after "~~products~~" insert "snuff and chewing tobacco"

Page 2, line 5, remove the overstrike over "~~is computed based~~"

Page 2, remove the overstrike over line 6

Page 2, line 8, overstrike "and regulations"

Page 2, line 30, overstrike the second "and" and insert immediately thereafter an underscored comma

Page 2, line 30, after "tobacco" insert ", and other tobacco products"

Page 3, line 1, overstrike "and, upon"

Page 3, overstrike lines 2 and 3

Page 3, line 4, overstrike "57-36-25, at the time the products were brought into this state"

Page 3, line 6, overstrike "or" and insert immediately thereafter an underscored comma

Page 3, line 6, after "tobacco" insert ", or other tobacco products"

Page 3, line 7, after the period insert "For cigars, pipe tobacco, or other tobacco products for which the tax commissioner is unable to readily identify the established price for which a manufacturer sells the cigars, pipe tobacco, or other tobacco products to a distributor, the excise tax shall be paid by the retailer and the "wholesale purchase price" means the price at which the retailer sells such product to a customer at the point of sale, exclusive of any discount or reduction."

Page 3, line 10, overstrike "and regulations"

Renumber accordingly

Date: 2.10.15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 2322

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.0769.03002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen Oehlke Seconded By Sen. Triplett

Motion passed 6-1-0

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook		✓	Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2.10.15

Roll Call Vote #: 2

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 2322**

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Sen. Unruh Seconded By Sen. Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod		✓
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett		✓
Senator Brad Bekkedahl		✓			
Senator Dave Oehlke		✓			
Senator Jessica Unruh	✓				

Total (Yes) 3 No 4

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-10-15

Roll Call Vote #: 3

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 2322

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15 .0769.03002 Title 04000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Bekkedahl Seconded By Sen. Oehlke

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook		✓	Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen		✓	Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh		✓			

Total (Yes) 4 No 3

Absent 0

Floor Assignment Sen. Dotzenrod

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2322: Finance and Taxation Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2322 was placed on the Sixth order on the calendar.

Page 1, line 10, after "up" insert "of."

Page 1, line 10, after "of" insert ", or derived from"

Page 1, line 10, after "part" insert ", which can be ingested in any way. "Other tobacco products" includes any product or device that contains nicotine and any separately sold component of such a product or device. "Other tobacco products" does not include a product that delivers nicotine for human consumption if that product has been approved by the United States food and drug administration for sale as a tobacco-cessation product"

Page 1, line 13, overstrike "and" and insert immediately thereafter a boldfaced underscored comma

Page 1, line 13, after "tobacco" insert "**, and other tobacco products**"

Page 1, line 13, overstrike "Other"

Page 1, line 14, overstrike "tobacco products - Excise" and insert immediately thereafter "**Snuff and chewing tobacco excise**"

Page 1, line 18, overstrike "and" and insert immediately thereafter an underscored comma

Page 1, line 18, after "tobacco" insert ", and other tobacco products"

Page 1, line 20, overstrike "or" and insert immediately thereafter an underscored comma

Page 1, line 20, after "tobacco" insert ", or other tobacco products"

Page 1, line 21, after the period insert "For cigars, pipe tobacco, or other tobacco products for which the tax commissioner is unable to readily identify the established price for which a manufacturer sells the cigars, pipe tobacco, or other tobacco products to a distributor, the excise tax shall be paid by the retailer and the "wholesale purchase price" means the price at which the retailer sells such product to a customer at the point of sale, exclusive of any discount or reduction."

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Page 3, line 10, overstrike "and regulations"

Re-number accordingly

2015 SENATE APPROPRIATIONS

SB 2322

2015 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2322
2/16/2015
Job # 23929 (48:48)

- Subcommittee
 Conference Committee

Committee Clerk Signature

Wendy Boyd for *Ally D. Boyd*

Explanation or reason for introduction of bill/resolution:

(INITIAL HEARING)

A BILL relating to the excise taxes on tobacco products and the cigarette tax and relating

Minutes:

9 attachments

Chairman Holmberg called the committee to order at 3:30pm with all committee members present.

Chris Kadrmas, Legislative Council
Nick Creamer, OMB

---IN SUPPORT---

Tim Mathern, District 11 Senator (*see attachment #1*)

Senator Mathern: I've learned that to save lives and reduce health care costs, we need to make a change in what the cost of tobacco is. This bill increases the tobacco tax to \$2 per pack in terms of the cigarettes and then all of the other tobacco products that similar amount of change.

Chairman Holmberg: I have received more than 1 email on this issue. One of the points is regarding E cigarettes. As I understand it, they are not approved by FDA for sale as a tobacco succession product and this bill would put a tax on E-cigarettes. If the FDA were to change, then that tax would go off, correct?

Senator Mathern: Correct. The amendments to clarify that it does cover those products were added on in Finance and Tax committee. There was some debate as to whether or not this bill covered all of those products. The amendments were added to clarify that they are all covered, so that there is a tax on those items. If the FDA says they actually are a succession device at some point- for instance gum and patches are exempted- they would also be exempted.

(5:10) **TJ Jerke**, Education & Advocacy Specialist for Tobacco Free ND
(see attachment #2)

Vice Chairman Bowman: We're talking about people motivated to stop smoking because of the tax. Do you think the kids in high school who drive \$25,000 cars to school will be worried about another dollar for a pack of cigarettes?

TJ: It won't prevent everyone, but it will make a significant decrease in the youth smoking.

Senator Gary Lee: It seems like we are trying to raise the tax to be competitive with surrounding states. If we really want to benefit from what you describe are the health risks, why don't we make it \$5 or \$10?

TJ: I certainly would entertain a \$5 tax increase. We know many individuals may not support that, but I would certainly work with you on that. The strategy is two-fold. The \$2 amount came from looking at the upper Midwest states. We averaged them out and came up with this number. If we could increase it more, we would support that.

Chairman Holmberg: The highest tax appears to be in Chicago around \$6.16 per pack

TJ: I believe you are correct. New York is high as well.

Chairman Holmberg: Right, that is \$5.85 according to my source. If we went to \$6.16, what would stop someone in Fargo from driving over to Minnesota and buying the much cheaper cigarette?

TJ: The tobacco tax will be at \$2 and Minnesota would still be at \$2.90. If the same price per pack is similar in both states, the tobacco tax will still be higher in our neighboring state; therefore one would think that the price would be higher as well.

Senator Holmberg: I think right now you would find that Hugo's in East Grand Forks sells fewer cigarettes than Hugo's across the river in Grand Forks.

(16:20) **Senator Carlisle:** What would happen on the reservations? Do you think folks will figure out another plan?

TJ: No. The reservations are not going to be an issue in this case. The North Dakota Department of Health recently conducted a survey regarding the 4 reservations. The average price per pack is comparable if not even higher within reservations. Right now North Dakota has an agreement with the Standing Rock Sioux Tribe. They are administering a 44 cent tax and if this tax were to go up, theirs would as well. Turtle Mountain has a five cent self-imposed tax that we think may go higher but we haven't had any conversations with them. We know they had a great health care benefit with this and millions of dollars flowing in that they can use for their reservation members. We recently found out that 3 affiliated tribes are going to be leveraging their own cigarette tax as well. We have reason to believe that it may be pretty high, but we don't know for certain.

Senator Carlisle: there is only one reservation, Standing Rock, and then one with a nickel is that correct?

TJ: Correct. One is at 44 cents, one is at 5 cents and we know a third one will impose a tax.

Senator Carlisle: Whatever happened to old-fashioned will power? I was left the service after 4 years and quit on my own when I was 22 years old. Can't people figure it out on their own?

TJ: Right now about 20% of North Dakotans are smoking, many of which have started when they were younger. This bill is a third leg in a three legged stool. It is critical and key to lowering smoking use in North Dakota. The first is effective and efficient tobacco prevention funding which the state has. The other is a state-wide smoke free law. The third is a high cigarette tax. Long story short is nicotine. The tobacco industry has increased their

addicting ingredient nicotine within their tobacco products. I can't speak to the will power personally since I do not smoke, but this bill would be very helpful.

Senator Wanzek: You mentioned that it will curb youth smoking. Isn't it already against the law for those underage to smoke and those who selling it to them?

TJ: Yes, but the fact is that they are getting it in some way, shape or form.

Senator Mathern: This bill is silent on the appropriation; this is just raising the tax. The money would go to the general fund. Do your advocates have any preference other than that or are you just fine with this going to the general fund?

TJ: I will let the other testifiers address this question.

(22:05) **Deb Knuth**, Director of government relations in ND for the American Cancer Society Cancer Action Network (see attachment #3)

(25:40) **Kristie Wolff**, Program Manager for the American Lung Association in ND (see attachment #4)

(28:50) **June Herman**, Regional Vice President of Advocacy for the American Heart Association (see attachment #5)

Vice Chairman Bowman: In increasing cigarette tax, will this push our kids to marijuana use? It has got crazy in Colorado. That is what they use to raise money, but look at what happens to the people.

June: I don't know if there is any data to support this concept.

Vice Chairman Bowman: I understand, but I can definitely see that happening.

(34:00) **Theresa Will**, Director of City-County Health District in Valley City and Chair for the ND SACCHO (see attachment #6)

Theresa: I also have testimony from a respiratory therapy expert. (see attachment #7)

(37:00) **Jeanne Prom**, Executive Director of the ND Center for Tobacco Prevention and Control Policy (see attachment #8)

Chairman Holmberg: Thank you for making it clear. I believe some people had the idea that this was going to go into your programs, and they already have their source of money.

---IN OPPOSITION---

(39:35) **Mike Rud**, ND Petroleum Marketers Association and ND Retail Association (see attachment #9)

Chairman Holmberg: We had testimony regarding polling that was conducted. About 69% were in favor of raising the state tobacco tax. Do you have any comments?

Mike: I've seen a lot of those polls. With all due respect, you can word that polling in whatever language you would like to make it look good to the general public. I've seen a variety of issues on those types of polls. Those can be slanted to say the least.

Senator O'Connell: I am confused on some of the surveys. When MN raised their tax, ND gained 12 million dollars the next biennium on cigarettes. One testimony says the raise will stop cigarette smokers and the next says we will gain 44 million dollars more with the raise. What are your thoughts on that?

Mike: As Senator Carlisle mentioned, there has to be a real concern with what will take place outside of just the regular sale outlets in North Dakota. We're going to see traffic move to the Native American reservations. MHA nation are working on compacts, but currently we only have one. We will deal with black market and tax evasion.

Senator Carlisle: Do they smuggle without the stamps?

Mike: They can come in a variety of ways. In most situations, if they're smuggled here they are not likely going to have a stamp on them. They could be counterfeit or they may not be fire safe, as North Dakota law dictates they should be. They could come from a variety of different areas.

Senator Mathern: I would like some idea of what amount of money is involved here for your members, such as an average amount they would sell in a month? If the people did put a measure on the ballot and passed the tax, what would the consequences for the retailers be?

Mike: I don't have specific details of what a store might face. On the average you probably range from 30 to 50% of your sales depending on what kind of store you're operating. That would be what they are generating on their overall revenue. The consequences of the sales tax would be that we would lose business to South Dakota and Montana. More importantly is the potential for Black Market and tax evasion.

Senator O'Connell: Is there state tax on the military base?

Mike: I do not know the answer to that.

Chairman Holmberg closes the hearing on SB 2232.

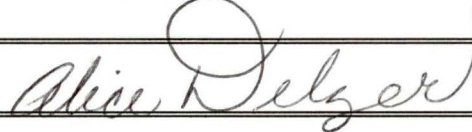
2015 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2322
2/17/2015
Job # 23943

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to the excise taxes on tobacco produces and the cigarette tax; relating to the exemption from the tobacco tax for products given to veterans' home & state hospital. (DO NOT PASS)

Minutes:

Chairman Holmberg called the committee to order on Tuesday, February 17, 2015 at 8:00 am in regards to SB 2322. Roll Call was taken. All committee members were present. Tammy Dolan, OMB and Chris Kadrmaz, Legislative Council were also present.

Senator Carlisle moved a do not pass . 2nd by V.Chairman Bowman.

Senator Robinson made comments that he would support the bill. He stated that here we have an opportunity to provide for a healthier community for our citizens.

Senator Mathern: essentially I introduced this bill as a matter of health. We do have reliable professional resources that if we can get the kids up to the age of 18 they will not smoke for life. This is \$1B of savings in our health care cost , that is the reason I ask you to vote no on this motion.

Chairman Holmberg: Call the roll on a do not pass on 2322.

A Roll Call vote was taken. Yea: 10; Nay: 3; Absent: 0. Motion carried. Senator Carlisle will carry the bill.

The hearing was closed on SB 2322.

Date: 2-17-15
 Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
 BILL/RESOLUTION NO. 2322

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation:
- Adopt Amendment
 - Do Pass Do Not Pass
 - As Amended
 - Place on Consent Calendar
 - Without Committee Recommendation
 - Rerefer to Appropriations
- Other Actions: Reconsider _____

Motion Made By Carlisle Seconded By Bowman

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Heckaman		✓
Senator Bowman	✓		Senator Mathern		✓
Senator Krebsbach	✓		Senator O'Connell	✓	
Senator Carlisle	✓		Senator Robinson		✓
Senator Sorvaag	✓				
Senator G. Lee	✓				
Senator Kilzer	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 10 No 3

Absent _____

Floor Assignment Carlisle

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2322, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO NOT PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2322 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

SB 2322

Chairman Cook and members of the Senate Finance and Tax Committee,

My name is Tim Mathern. I introduced SB2322 to save lives and reduce health care costs.

My research says to accomplish this I need to come to your tax committee for help; not a human service committee, not a health committee, not a spending committee. The research concludes without question that the cost of tobacco drives use. Implementation of this bill, with the clarifying amendments that bill is to include e-cigarettes I am asking you to attach, will do the following.

- 1) Prevent an estimated 7,500 youth from taking up smoking for the rest of their lives. *
- 2) Motivate an estimated 8,000 current adult smokers to stop using cigarettes for good.*
- 3) Save an estimated \$1 billion in health care costs over the next 10 years.*
- 4) Increases the excise tax on cigarettes from 44 cents to \$2/pack.
- 5) Increases the excise tax on other tobacco products from 28% to 50% of wholesale purchase price.
- 6) Increases the excise tax on snuff from 60 cents per ounce to \$2.72 per ounce.
- 7) Increases the excise tax on chewing tobacco from 16 cents per ounce to 73 cents per ounce.
- 8) Allows the new tobacco tax revenue to be deposited in the state general fund, but legislators decide to use the new revenue for specific purposes.
- 9) "Holds harmless" the state general fund, where all current tobacco tax revenues are deposited. In 2015-17 about \$50 million per biennium from tobacco tax revenues will continue to be deposited into the state general fund. This is the amount of revenue expected to be generated by 44 cents/pack on cigarettes, 28% of wholesale purchase price on other tobacco products, and per ounce tax on snuff and chewing tobacco (60 cents and 16 cents, respectively). The amount of revenue generated by 3 of the 44 cents/pack on cigarettes will continue to be directed to cities as described in current law. In addition to that \$50 million, an estimated \$122 million generated by the tobacco taxes in SB 2322 will also be deposited into the state general fund.
- 10) Improves the definition of other tobacco products to include new and evolving tobacco and tobacco-derived products, while excluding FDA-approved cessation products that include nicotine.
- 11) Establishes a base for taxation of products not sold at the wholesale level.
- 12) Eliminates the tax exemptions for tobacco sold at the North Dakota veterans' home and state hospital.

Members of the Senate Finance and Tax Committee, let's work together to save lives and reduce health care costs, I ask you for a Do Pass recommendation on SB2322. Thank you.

* 1 & 2 – American Cancer Society Cancer Action Network and Campaign for Tobacco-Free Kids, 2015

* 3 – RTI International, 2015 (RTI International is the independent evaluator on contract with the ND Center for Tobacco Prevention and Control Policy to evaluate the comprehensive tobacco control program).

February 2, 2015

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SR 2322

PROPOSED AMENDMENTS TO SENATE BILL NO. 2322

Page 1, line 10, after "up" insert "of."

Page 1, line 10, after "of" insert ", or derived from"

Page 1, line 10, after "part" insert ", which can be ingested in any way. "Other tobacco products" includes any product or device that contains nicotine and any separately sold component of such a product or device. "Other tobacco products" does not include a product that delivers nicotine for human consumption if that product has been approved by the United States food and drug administration for sale as a tobacco-cessation product"

Page 1, line 13, overstrike "**and**" and insert immediately thereafter a boldfaced comma

Page 1, line 13, after "**tobacco**" insert "**, and other tobacco products**"

Page 1, line 13, overstrike "**Other** "

Page 1, line 14, overstrike "**tobacco products - Excise**" and insert immediately thereafter "**Snuff and chewing tobacco excise**"

Page 1, line 18, overstrike the first "and" and insert immediately thereafter a comma

Page 1, line 18, after "tobacco" insert ", and other tobacco products"

Page 1, line 20, overstrike the first "or" and insert immediately thereafter a comma

Page 1, line 20, after "tobacco" insert ", or other tobacco products"

Page 1, line 21, after the period insert "For cigars, pipe tobacco, or other tobacco products for which the tax commissioner is unable to readily identify the established price for which a manufacturer sells the cigars, pipe tobacco, or other tobacco products to a distributor, the excise tax shall be paid by the retailer and the "wholesale purchase price" means the price at which the retailer sells such product to a customer at the point of sale, exclusive of any discount or reduction."

Page 2, line 1, after "dollars" insert "seventy-two"

Page 2, line 3, after "sixteen" insert "seventy-three"

Page 2, line 5, remove the overstrike over "~~For purposes of this subsection, the tax on~~"

Page 2, line 5, after "~~products~~" insert "snuff and chewing tobacco"

Page 2, line 5, remove the overstrike over "~~is computed based~~"

Page 2, remove the overstrike over line 6

Page 2, line 8, overstrike "and regulations"

Page 2, line 30, overstrike the second "and" and insert immediately thereafter a comma

Page 2, line 30, after "tobacco" insert ", and other tobacco products"

Page 3, line 1, overstrike "and, upon"

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Page 3, overstrike lines 2 and 3

Page 3, line 4, overstrike "57-36-25, at the time the products were brought into this state"

Page 3, line 6, overstrike the first "or" and insert immediately thereafter a comma

Page 3, line 6, after "tobacco" insert ", or other tobacco products"

Page 3, line 7, after the period insert "For cigars, pipe tobacco, or other tobacco products for which the tax commissioner is unable to readily identify the established price for which a manufacturer sells the cigars, pipe tobacco, or other tobacco products to a distributor, the excise tax shall be paid by the retailer and the "wholesale purchase price" means the price at which the retailer sells such product to a customer at the point of sale, exclusive of any discount or reduction."

Page 3, line 10, overstrike "and regulations"

Renumber accordingly

The logo features a stylized blue cloud shape on the left, partially overlapping the text. The text "Tobacco Free" is in a bold, black, sans-serif font, and "North Dakota" is in a black, cursive script font.

Tobacco Free North Dakota

Testimony in support of Senate Bill 2322
From Dr. Eric Johnson
President, Tobacco Free North Dakota
To Senate Finance & Tax
Senator Dwight Cook, Chair
February 4, 2015

I am Dr. Eric Johnson, Associate Professor at the University of North Dakota School of Medicine and health sciences, where I hold several teaching and administrative appointments. I also maintain a clinic practice in diabetes and long term care services. I have been the physician consultant for ND Quits, President of Tobacco Free North Dakota and serve on the Governor appointed Advisory and Executive Committees for the Center for Tobacco Prevention and Control.

Background

We often think of tobacco use as a bad habit, and although it has many behavior components, the fact is that nicotine is one of the most addictive drugs in the world. Nicotine addiction is very much like all other addiction disorders.

It is well documented that most smokers identify tobacco use as harmful and express a desire to reduce or stop using it, and nearly 35 million of them want to quit each year. **This includes many youth who are not successful.**

480,000 people die every year in the U.S. from tobacco-related diseases including heart disease, cancer of multiple organ systems, stroke, or lung disease. Unlike most other addiction disorders, the parts of the brain responsible for nicotine addiction never really reduce function or shutdown. When nicotine is used again, these areas become very active almost immediately.

We may think that the use of tobacco is an adult lifestyle choice, but over ¾ of users begin before age 18 and are already addicted by adulthood. Addiction is an even more complicated set of disorders in the developing brain. Age of first

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use is a predictor of severity of addiction with any addiction disorder. Brain development continues past adolescence. (American Lung Association)

Impact of tax on health

In recent years, it's become apparent that increased taxes on tobacco and tobacco related product reduces usage. When we are having serious discussion in our country about the reduction of health care costs, we really need to consider the burden of preventable disease.

We talk about 3 legs of the stool in preventing tobacco related disease:

1. A fully funded comprehensive tobacco prevention and control policy at Center for Disease Prevention and Control recommended levels. North Dakota has this, and is one of two states that does
2. A strong smoke-free, clean indoor air law. North Dakota has this.
3. Higher tobacco taxes. North Dakota does not have this.

On average, it costs \$10.48 in healthcare costs per one pack. Our current tax is 44 cents a pack.

Smokers who make less than \$25,000/year have a smoking rate of about 30%- the overall state average is a little under 20% (NDDOH, CDC)

Among high school aged, rates have been dropping over the last decade, but have stalled at about 19%. The nationwide high school smoking rate is about 15%

We know that increasing taxes on tobacco reduces tobacco use significantly, and most notably in youth and lower socioeconomic classes. As a physician, I have been involved with several preventive programs, and this would be a powerful, high yield strategy.

Minnesota has recently released data that their increase in tobacco tax resulted in a drop from about an 18% youth smoking rate to about a 10% smoking rate. This is one of the lowest youth smoking rates in the country. Their tax is \$2.90 per pack.

An increase in our tax will bring us in line with our neighbors in MN, SD, and MT.

We have been a leader with our comprehensive program and strong smoke free law, and we know North Dakotans favor this. In addition, we have programs that

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smokers looking to quit can use for free in North Dakota, so these smokers will not be on their own in their quest to quit.

I really feel that evidence supports tobacco tax as an efficient way to reduce tobacco use in North Dakota, particularly among youth.

We need good preventive strategies in health care policy to save future costs and lives.

Thank you for your time today.



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NEW REVENUES, PUBLIC HEALTH BENEFITS & COST SAVINGS FROM A \$1.56 CIGARETTE TAX INCREASE IN NORTH DAKOTA

Current state cigarette tax: 44 cents per pack (46th among all states and DC)
Smoking-caused health care and productivity costs in North Dakota: \$10.48 per pack

Annual health care expenditures in North Dakota directly caused by tobacco use: \$326 million
Smoking-caused state Medicaid program spending each year: \$47 million

Projected Public Health Benefits for North Dakota from the Cigarette Tax Rate Increase	
Percent decrease in youth smoking:	25.2%
Youth under age 18 kept from becoming adult smokers:	7,900
Current adult smokers who would quit:	8,500
Premature smoking-caused deaths prevented:	4,700
5-Year number of smoking-affected births avoided:	1,600
5-Year health care cost savings from fewer smoking-caused lung cancer cases:	\$1.35 million
5-Year health care cost savings from fewer smoking-affected pregnancies & births:	\$3.62 million
5-Year health care cost savings from fewer smoking-caused heart attacks & strokes:	\$2.65 million
5-Year Medicaid program savings for the state:	\$920,000
Long-term health care cost savings from adult & youth smoking declines:	\$312.90 million

2.10.14 TFK / February 13, 2014

- Small tax increase amounts do not produce significant public health benefits or cost savings because the cigarette companies can easily offset the beneficial impact of such small increases with temporary price cuts, coupons, and other promotional discounting. Splitting a tax rate increase into separate, smaller increases in successive years will similarly diminish or eliminate the public health benefits and related cost savings (as well as reduce the amount of new revenues).
- Raising state tax rates on other tobacco products (OTPs) to parallel the increased cigarette tax rate will bring the state additional revenue, public health benefits, and cost savings (and promote tax equity). With unequal rates, the state loses revenue each time a cigarette smoker switches to cigars, roll-your-own tobacco, or smokeless tobacco products. To parallel the new \$2.00 per pack cigarette tax, the state's new OTP tax rate should be 51% of the wholesale price with minimum tax rates for each major OTP category linked to the state cigarette tax rate on a per-package or per-dose basis.

Projected New Annual Revenue from Increasing the Cigarette Tax Rate by \$1.56 Per Pack: \$39.30 million

New Annual Revenue is the amount of additional new revenue over the first full year after the effective date. The state will collect less new revenue if it fails to apply the rate increase to all cigarettes and other tobacco products held in wholesaler and retailer inventories on the effective date.

Explanations & Notes

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Health care costs listed at the top of the page are from the U.S. Centers for Disease Control and Prevention (CDC). Per-pack smoking-caused health care and productivity costs and annual smoking-caused state Medicaid program spending estimates are in 2004 dollars, the most recent available, from the CDC's 2006 State Data Highlights. Annual health care expenditures in North Dakota directly caused by tobacco use are in 2009 dollars and are from the CDC's 2014 *Best Practices from Comprehensive Tobacco Control Programs*.

Projections are based on research findings that each 10% increase in the retail price of cigarettes reduces youth smoking by 6.5%, adult prevalence by 2%, and total cigarette consumption by about 4% (adjusted down to account for tax evasion effects). Revenues still increase because the higher tax rate per pack will bring in more new revenue than is lost from the tax-related drop in total pack sales.

The projections incorporate the effect of ongoing background smoking declines and the continued impact of any recent state cigarette tax increases on prices, smoking levels, and pack sales.

These projections are fiscally conservative because they include a generous adjustment for lost state pack sales (and lower net new revenues) from possible new smuggling and tax evasion after the rate increase and from fewer sales to smokers or smugglers from other states. For ways that the state can protect and increase its tobacco tax revenues and prevent and reduce contraband trafficking and other tobacco tax evasion, see the Campaign for Tobacco-Free Kids factsheet, *State Options to Prevent and Reduce Cigarette Smuggling and to Block Other Illegal State Tobacco Tax Evasion*, <http://tobaccofreekids.org/research/factsheets/pdf/0274.pdf>.

Projected numbers of youth stopped from smoking and dying are based on all youth ages 17 and under alive today. Savings to state Medicaid programs include estimated changes in enrollment resulting from the Affordable Care Act. Long-term cost savings accrue over the lifetimes of persons who stop smoking or never start because of the tax rate increase. All cost savings are in 2014 dollars.

Projections for cigarette tax increases much higher than \$1.00 per pack are limited, especially for states with relatively low current tax rates, because of the lack of research on the effects of larger cigarette tax increase amounts on consumption and prevalence. Projections for cigarette tax increases much lower than \$1.00 per pack are also limited because small tax increases are unlikely to produce significant public health benefits.

Ongoing reductions in state smoking rates will, over time, gradually erode state cigarette tax revenues (in the absence of any new rate increases). However, those declines are more predictable and less volatile than many other state revenue sources, such as state income tax or corporate tax revenues (which can drop sharply during recessions). In addition, the smoking declines that reduce tobacco tax revenues will simultaneously produce much larger reductions in government and private sector smoking-caused health care and other costs. See the Campaign for Tobacco-Free Kids factsheet, *Tobacco Tax Increases are a Reliable Source of Substantial New State Revenue*, <http://tobaccofreekids.org/research/factsheets/pdf/0303.pdf>.

For other ways states can increase revenues (and promote public health) beyond just raising cigarette tax rates, see the Campaign factsheet, *The Many Ways States Can Raise Revenue While Also Reducing Tobacco Use and Its Many Harms & Costs*, <http://tobaccofreekids.org/research/factsheets/pdf/0357.pdf>.

Additional information and resources to support tobacco tax increases are available at
http://www.tobaccofreekids.org/facts_issues/fact_sheets/policies/tax/us_state_local/ and
<http://acscan.org/tobacco/taxes/>.

For more on sources and calculations, see <http://www.tobaccofreekids.org/research/factsheets/pdf/0281.pdf>.

Campaign for Tobacco-Free Kids
Ann Boonn

American Cancer Society Cancer Action Network
Melissa Maitin-Shepard

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RAISING CIGARETTE TAXES REDUCES SMOKING, ESPECIALLY AMONG KIDS (AND THE CIGARETTE COMPANIES KNOW IT)

The cigarette companies have opposed tobacco tax increases by arguing that raising cigarette prices would not reduce adult or youth smoking. But the companies' internal documents, disclosed in the tobacco lawsuits, show that they know very well that raising cigarette prices is one of the most effective ways to prevent and reduce smoking, especially among kids.

- Philip Morris: *Of all the concerns, there is one - taxation - that alarms us the most. While marketing restrictions and public and passive smoking [restrictions] do depress volume, in our experience taxation depresses it much more severely. Our concern for taxation is, therefore, central to our thinking*¹
- Philip Morris: *When the tax goes up, industry loses volume and profits as many smokers cut back.*²
- RJ Reynolds: *If prices were 10% higher, 12-17 incidence [youth smoking] would be 11.9% lower.*³
- Philip Morris: *It is clear that price has a pronounced effect on the smoking prevalence of teenagers, and that the goals of reducing teenage smoking and balancing the budget would both be served by increasing the Federal excise tax on cigarettes.*⁴
- Philip Morris: *Jeffrey Harris of MIT calculated . . . that the 1982-83 round of price increases caused two million adults to quit smoking and prevented 600,000 teenagers from starting to smoke . . . We don't need to have that happen again.*⁵
- Philip Morris: *A high cigarette price, more than any other cigarette attribute, has the most dramatic impact on the share of the quitting population . . . price, not tar level, is the main driving force for quitting.*⁶

[For more on cigarette company documents and price/tax increases see the 2002 study in the *Tobacco Control* journal, "Tax, Price and Cigarette Smoking: Evidence from the Tobacco Documents."⁷]

The cigarette companies have even publicly admitted the effectiveness of tax increases to deter smoking in their required filings with the U.S. Securities and Exchange Commission.

- Philip Morris: *Tax increases are expected to continue to have an adverse impact on sales of tobacco products by our tobacco subsidiaries, due to lower consumption levels. . .* [10-Q Report, November 3, 2008]
- Lorillard Tobacco: *We believe that increases in excise and similar taxes have had an adverse impact on sales of cigarettes. In addition, we believe that future increases, the extent of which cannot be predicted, could result in further volume declines for the cigarette industry, including Lorillard Tobacco. . .* [10-Q Report, November 4, 2008]
- R.J. Reynolds: *Together with manufacturers' price increases in recent years and substantial increases in state and federal taxes on tobacco products, these developments have had and will likely continue to have an adverse effect on the sale of tobacco products.* [10-Q Report, October 24, 2008]

Or, as the Convenience Store News put it: *"It's not a hard concept to grasp -- as taxes on cigarettes goes up, sales of cigarettes go down."*⁸

Economic Research Confirms That Cigarette Tax Increases Reduce Smoking. Numerous economic studies in peer-reviewed journals have documented that cigarette tax or price increases reduce both adult and underage smoking. The general consensus is that every 10 percent increase in the real price of cigarettes reduces overall cigarette consumption by approximately three to five percent, reduces the number of young-adult smokers by 3.5 percent, and reduces the number of kids who smoke by six or seven percent.⁹ Research studies have also found that:

- Cigarette price and tax increases work even more effectively to reduce smoking among males, Blacks, Hispanics, and lower-income smokers.¹⁰
- A cigarette tax increase that raises prices by ten percent will reduce smoking among pregnant women by seven percent, preventing thousands of spontaneous abortions and still-born births, and saving tens of thousands of newborns from suffering from smoking-affected births and related health consequences.¹¹

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- Higher taxes on smokeless tobacco reduce its use, particularly among young males; and increasing cigar prices through tax increases reduce adult and youth cigar smoking.¹²
- Cigarette price increases not only reduce youth smoking but also reduce both the number of kids who smoke marijuana and the amount of marijuana consumed by continuing users.¹³
- By reducing smoking levels, cigarette tax increases reduce secondhand smoke exposure among nonsmokers, especially children and pregnant women.

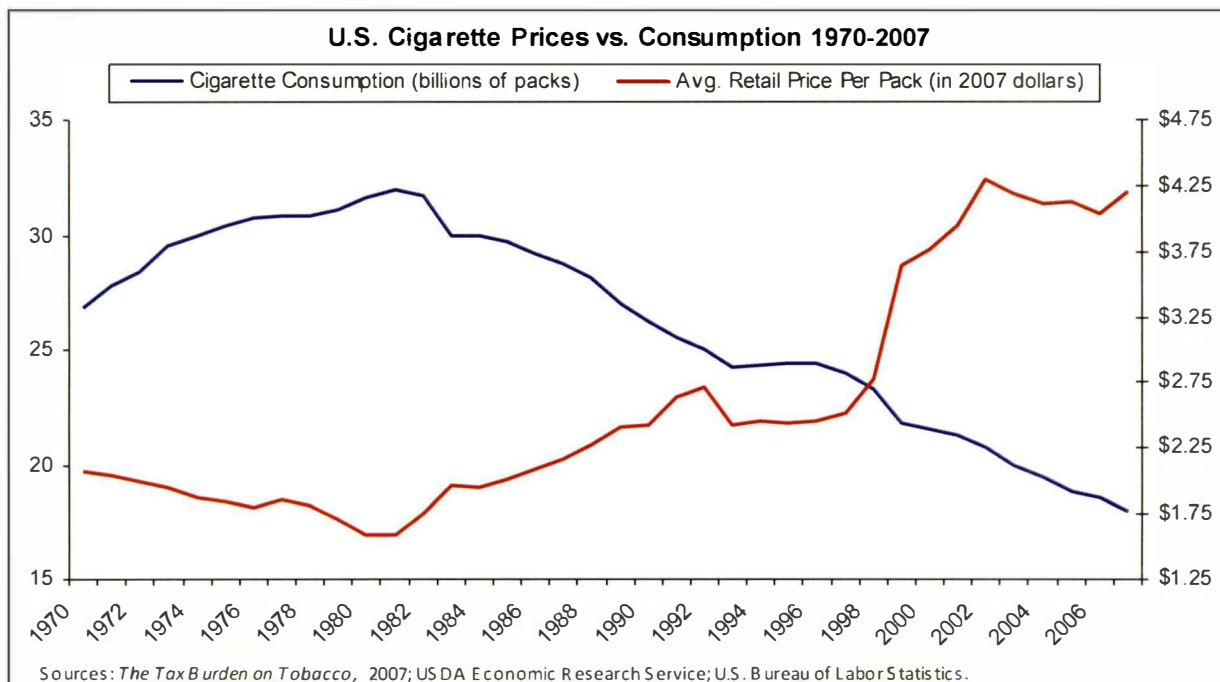
Recent State Experiences

In every single state that has significantly raised its cigarette tax rate, pack sales have gone down sharply.¹⁴ While some of the decline in pack sales comes from interstate smuggling and from smokers going to other lower-tax states to buy their cigarette, reduced consumption from smokers quitting and cutting back plays a more powerful role. As shown in more detail, below, nationwide data – which counts both legal in-state purchases and the vast majority of packs purchased through cross-border, Internet, or smuggled sales – shows that overall packs sales go down as state cigarette tax increases push up the average national price.

In-state evidence shows that state cigarette tax increases are prompting many smokers to quit or cutback. For example, the Wisconsin Quit Line received a record-breaking 20,000 calls in the first two months after its \$1.00 per cigarette pack increase (it typically receives 9,000 calls per year). Likewise, in Texas and Iowa, which each increased their cigarette taxes by \$1.00 in 2007, the number of calls to the state quitlines have been much higher compared to the year before.¹⁵ It is also clear that these efforts to quit by smokers after tax increases translate directly into lower future smoking rates. In Washington State, for example, adult smoking from the year before its 60-cent cigarette tax increase in 2002 to the year afterwards declined from 22.6 to 19.7 percent, reducing the number of adult smokers in the state by more than 100,000, despite overall population increases.¹⁶

Increasing U.S. Cigarette Prices and Declining Consumption

Although there are many other factors involved, comparing the trends in cigarette prices and overall U.S. cigarette consumption from 1970 to 2007 shows that there is a strong correlation between increasing prices and decreasing consumption.



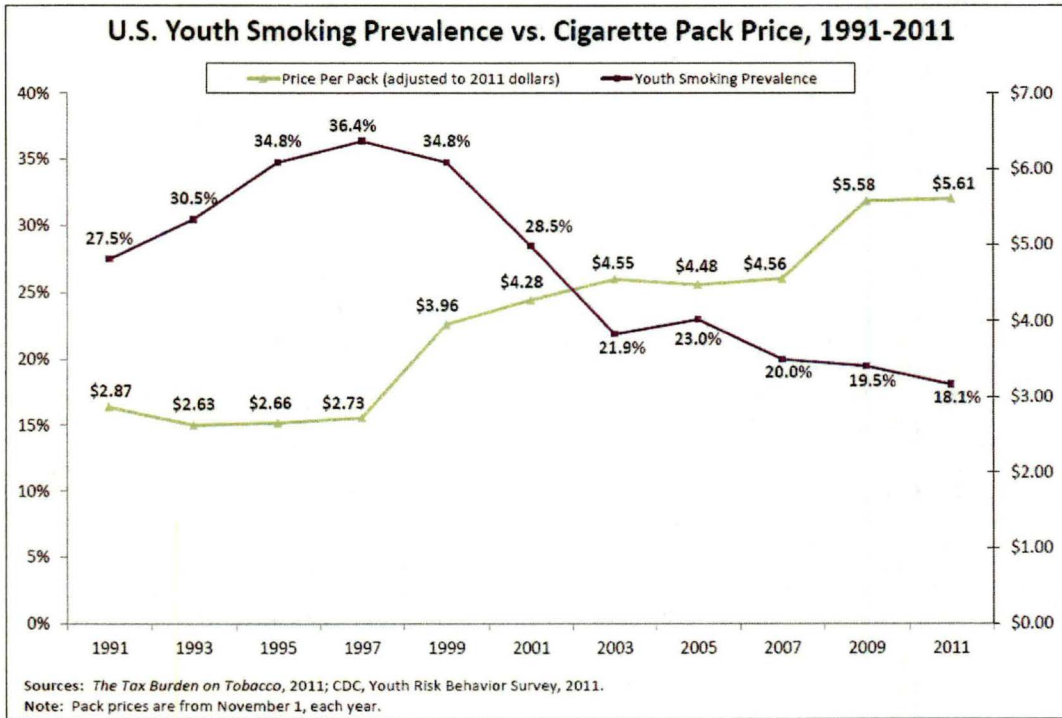
While U.S. cigarette prices are largely controlled by the cigarette companies' price-setting decisions, from 1970 to 2006, the federal tax on cigarettes also increased from eight cents to 39 cents per pack and the average state cigarette tax increased from 10 cents to \$1.07 per pack during that time period. Without these

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federal and state tax increases, U.S. cigarette prices would be much lower and U.S. smoking levels would be much higher.

Prices and Youth Smoking Rates. The chart below shows how closely youth smoking prevalence is to cigarette pack prices. As prices climbed in the late 1990s and early 2000s, youth smoking rates declined, but as the price decreased between 2003 and 2005 (along with funding for tobacco prevention programs in many states), youth rates increased. Even the slight increase in price between 2005 and 2007 corresponds with a decline in youth smoking rates.

Researchers found that the 61.66-cent federal cigarette tax rate increase on April 1, 2009 had a substantial and immediate impact on youth smoking. The percentage of students who reported smoking in the past 30 days dropped between 9.7 percent and 13.3 percent immediately following the tax increase, resulting in an estimated 220,000 and 287,000 fewer current smokers among middle and high school students in May 2009.¹⁷



Expert Conclusions on Cigarette Prices and Smoking Levels

- In its 2007 report, *Ending the Tobacco Problem: A Blueprint for the Nation*, the National Academy of Sciences' Institute of Medicine recommends raising cigarette taxes in states with low rates and indexing them to inflation, to reduce cigarette consumption and to provide money for tobacco control. The report states, "Tobacco excise tax revenues pose a potential funding stream for state tobacco control programs. Setting aside about one-third of the per-capita proceeds from tobacco excise taxes would help states fund programs at the level suggested by CDC."¹⁸
- The President's Cancer Panel's 2007 report, *Promoting Healthy Lifestyles*, advised increasing state tobacco taxes, stating, "Increases in tobacco excise taxes, which are passed along to consumers in the form of higher tobacco product prices, have proven highly effective in reducing tobacco use by promoting cessation among current users, discouraging relapse among former users, preventing initiation among potential users, and reducing consumption among those who continue to use tobacco. These revenues also provide crucial dollars needed to fund anti-tobacco efforts."¹⁹
- The 2000 U.S. Surgeon General's Report, *Reducing Tobacco Use*, found that raising tobacco-product prices decreases the prevalence of tobacco use, particularly among kids and young adults, and that tobacco tax increases produce "substantial long-term improvements in health." From its review of existing research, the report concluded that raising tobacco taxes is one of the most effective tobacco prevention and control strategies.²⁰

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- Wall Street tobacco industry analysts have long recognized the powerful role increased cigarette taxes and rising cigarette prices play in reducing U.S. smoking levels. For example, a December 1998 "Sensitivity Analysis on Cigarette Price Elasticity" by Credit Suisse First Boston Corporation settled on a "conservative" estimate that cigarette consumption will decline by four percent for every 10 percent increase in price.
- In its 1998 report, *Taking Action to Reduce Tobacco Use*, the National Academy of Sciences' Institute of Medicine concluded that "the single most direct and reliable method for reducing consumption is to increase the price of tobacco products, thus encouraging the cessation and reducing the level of initiation of tobacco use."²¹

Campaign for Tobacco-Free Kids, October 11, 2012 / Ann Boonn

More information on state tobacco taxes is available at

http://www.tobaccofreekids.org/facts_issues/fact_sheets/policies/tax/us_state_local/

¹ Philip Morris document, "General Comments on Smoking and Health," Appendix I in *The Perspective of PM International on Smoking and Health Initiatives*, March 29, 1985, Bates No. 2023268329/8348.

² Ellen Merlo, Senior Vice President of Corporate Affairs, Philip Morris, 1994 draft speech to the Philip Morris USA Trade Council, January 11, 1994, Bates No. 2022811708/1755.

³ R.J. Reynolds Executive D. S. Burrows, "Estimated Change In Industry Trend Following Federal Excise Tax Increase," September 20, 1982, Bates No. 501988846/8849.

⁴ Philip Morris Research Executive Myron Johnston, "Teenage Smoking and the Federal Excise Tax on Cigarettes," September 17, 1981, Bates No. TA82034-TA82038.

⁵ Philip Morris Executive Jon Zoler, "Handling An Excise Tax Increase," September 3, 1987, Bates No. 2022216179/6180.

⁶ Philip Morris Executive Claude Schwab, "Cigarette Attributes and Quitting," March 4, 1993, Bates No. 2045447810.

⁷ Chaloupka, FJ, et al., "Tax, Price and Cigarette Smoking: Evidence from the Tobacco Documents and implications for tobacco company marketing strategies," *Tobacco Control* 11:62-72, March 2002.

⁸ "Cigarette Sales Down after Tax Increases," *Convenience Store News*, June 5, 2009.

⁹ See, e.g., Chaloupka, FJ, "Macro-Social Influences: The Effects of Prices and Tobacco Control Policies on the Demand for Tobacco Products," *Nicotine and Tobacco Research* 1(Suppl 1):S105-9, 1999; other studies at <http://tigger.uic.edu/~fjc/>; Tauras, J, "Public Policy and Smoking Cessation Among Young adults in the United States," *Health Policy* 6:321-32, 2004; Tauras, J, et al., "Effects of Price and Access Laws on Teenage Smoking Initiation: A National Longitudinal Analysis," *Bridging the Gap Research, ImpacTeen*, April 24, 2001, and others at <http://www.impactteen.org/researchproducts.htm>. Chaloupka, FJ & Pacula, R, *An Examination of Gender and Race Differences in Youth Smoking Responsiveness to Price and Tobacco Control Policies*, National Bureau of Economic Research, Working Paper 6541, April 1998; Emery, S, et al., "Does Cigarette Price Influence Adolescent Experimentation?," *Journal of Health Economics* 20:261-270, 2001; Evans, W & Huang, L, *Cigarette Taxes and Teen Smoking: New Evidence from Panels of Repeated Cross-Sections*, working paper, April 15, 1998; Harris, J & Chan, S, "The Continuum-of-Addiction: Cigarette Smoking in Relation to Price Among Americans Aged 15-29," *Health Economics Letters* 2(2):3-12, February 1998, <http://www.mit.edu/people/jeffrey/HarrisChanHEL98.pdf>. U.S. Department of Health and Human Services (HHS), *Reducing Tobacco Use: A Report of the Surgeon General*, Atlanta, Georgia: HHS, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2000, http://profiles.nlm.nih.gov/NN/B/B/L/Q/_/nnbblq.pdf.

¹⁰ See, e.g., U.S. Centers for Disease Control and Prevention (CDC), "Responses to Cigarette Prices By Race/Ethnicity, Income, and Age Groups – United States 1976-1993," *Morbidity and Mortality Weekly Report* 47(29):605-609, July 31, 1998, <http://www.cdc.gov/mmwr/preview/mmwrhtml/00054047.htm>. Chaloupka, FJ & Pacula, R, *An Examination of Gender and Race Differences in Youth Smoking Responsiveness to Price and Tobacco Control Policies*, National Bureau of Economic Research, Working Paper 6541, April 1998.

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¹¹ Ringel, J & Evans, W, "Cigarette Taxes and Smoking During Pregnancy," *American Journal of Public Health* 91(11):1851-6, 2001.

See also, TFK Factsheet, *Harm Caused by Pregnant Women Smoking or Being Exposed to Secondhand Smoke*, <http://www.tobaccofreekids.org/research/factsheets/pdf/0007.pdf>.

¹² Chaloupka, FJ, Tauras, J & Grossman, M, "Public Policy and Youth Smokeless Tobacco Use," *Southern Economic Journal* 64(2):503-16, October 1997. Ringel, JS, Wasserman, J, & Andreyeva, T, "Effects of Public Policy on Adolescents' Cigar Use: Evidence From the National Youth Tobacco Survey," *American Journal of Public Health* 95:995-998, 2005.

¹³ Chaloupka, FJ, et al., *Do Higher Cigarette Prices Encourage Youth to Use Marijuana?*, National Bureau of Economic Research, Working Paper No. 6939, February 1999.

¹⁴ TFK Factsheet, *Raising State Cigarette Taxes Always Increases State Revenues (and Always Reduces Smoking)*, <http://tobaccofreekids.org/research/factsheets/pdf/0098.pdf>.

¹⁵ "Calls to Wisconsin Tobacco Quit Line breaks all records," *The Dunn County News*, March 12, 2008. Souza, M, "Thank you for Smoking," *Longview-News Journal*, April 22, 2007; "Calls to Quitline Iowa double after cigarette tax raised," *AP*, March 22, 2007. See also, TFK Factsheet, *Quitlines Help Smokers Quit*, <http://www.tobaccofreekids.org/research/factsheets/pdf/0326.pdf>.

¹⁶ CDC, Current Adult Smokers, Behavioral Risk Factor Surveillance System (BRFSS).

¹⁷ Huang, J & Chaloupka, FJ, *The Impact of the 2009 Federal Tobacco Excise Tax Increase on Youth Tobacco Use*, National Bureau of Economic Research Working Paper 18026, April 2012, <http://www.nber.org/papers/w18026>.

¹⁸ Institute of Medicine (IOM), *Ending the tobacco problem: A blueprint for the nation*, Washington, DC: The National Academies Press, 2007, <http://www.iom.edu/Reports/2007/Ending-the-Tobacco-Problem-A-Blueprint-for-the-Nation.aspx>.

¹⁹ President's Cancer Panel, *Promoting Healthy Lifestyles, 2006-2007 Annual Report*, August 2007,

<http://deainfo.nci.nih.gov/advisory/pcp/annualReports/pcp07rpt/pcp07rpt.pdf>.

²⁰ HHS, *Reducing Tobacco Use: A Report of the Surgeon General*, 2000, http://profiles.nlm.nih.gov/NN/B/B/L/Q/_/nnbblq.pdf.

²¹ IOM, *Taking Action to Reduce Tobacco Use*, Washington, DC: National Academy Press, 1998,

http://www.nap.edu/catalog.php?record_id=6060.



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STATE CIGARETTE EXCISE TAX RATES & RANKINGS

Overall All States' Average: \$1.54 per pack
Major Tobacco States' Average: 48.5 cents per pack
Other States' Average: \$1.68 per pack

State	Tax	Rank
Alabama	\$0.425	47th
Alaska	\$2.00	12th
Arizona	\$2.00	12th
Arkansas	\$1.15	30th
California	\$0.87	33rd
Colorado	\$0.84	34th
Connecticut	\$3.40	4th
Delaware	\$1.60	22nd
DC	\$2.50	11th
Florida	\$1.339	27th
Georgia	\$0.37	48th
Hawaii	\$3.20	5th
Idaho	\$0.57	42nd
Illinois	\$1.98	17th
Indiana	\$0.995	32nd
Iowa	\$1.36	26th
Kansas	\$0.79	36th
Kentucky	\$0.60	40th

State	Tax	Rank
Louisiana	\$0.36	49th
Maine	\$2.00	12th
Maryland	\$2.00	12th
Massachusetts	\$3.51	2nd
Michigan	\$2.00	12th
Minnesota	\$2.90	7th
Mississippi	\$0.68	37th
Missouri	\$0.17	51st
Montana	\$1.70	19th
Nebraska	\$0.64	38th
Nevada	\$0.80	35th
New Hampshire	\$1.78	18th
New Jersey	\$2.70	9th
New Mexico	\$1.66	21st
New York	\$4.35	1st
North Carolina	\$0.45	45th
North Dakota	\$0.44	46th
Ohio	\$1.25	29th

State	Tax	Rank
Oklahoma	\$1.03	31st
Oregon	\$1.31	28th
Pennsylvania	\$1.60	22nd
Rhode Island	\$3.50	3rd
South Carolina	\$0.57	42nd
South Dakota	\$1.53	24th
Tennessee	\$0.62	39th
Texas	\$1.41	25th
Utah	\$1.70	19th
Vermont	\$2.75	8th
Virginia	\$0.30	50th
Washington	\$3.025	6th
West Virginia	\$0.55	44th
Wisconsin	\$2.52	10th
Wyoming	\$0.60	40th
Puerto Rico	\$2.23	NA
Guam	\$3.00	NA
Northern Marianas	\$1.75	NA

Table shows all cigarette tax rates in effect by January 1, 2015 (MN inflation adjustment on 1/1/2015). Since 2002, 47 states, DC, and several U.S. territories have increased their cigarette tax rates more than 110 times. The states in **bold type** have not increased their cigarette tax since 2005 or earlier. Currently, 30 states, DC, Puerto Rico, the Northern Marianas, and Guam have cigarette tax rates of \$1.00 per pack or higher; 15 states, DC, and Guam have cigarette tax rates of \$2.00 per pack or higher; six states and Guam have cigarette tax rates of \$3.00 per pack or higher; and one state (NY) has a cigarette tax rate more than \$4.00 per pack. Tobacco states are KY, VA, NC, SC, GA, and TN. States' average includes DC, but not Puerto Rico, other U.S. territories, or local cigarette taxes. The median tax rate is \$1.36 per pack. AK, MI, MN, MS, TX, and UT also have special taxes or fees on brands of manufacturers not participating in the state tobacco lawsuit settlements (NPMs).

The highest combined state-local tax rate is \$6.16 in Chicago, IL, with New York City second at \$5.85 per pack. Other high state-local rates include Evanston, IL at \$5.48 and Anchorage, AK at \$4.39 per pack. For more on local cigarette taxes, see: <http://tobaccofreekids.org/research/factsheets/pdf/0267.pdf>.

Federal cigarette tax is \$1.01 per pack. From the beginning of 1998 through 2002, the major cigarette companies increased the prices they charge by more than \$1.25 per pack (but also instituted aggressive retail-level discounting for competitive purposes and to reduce related consumption declines). In January 2003, Philip Morris instituted a 65-cent per pack price cut for four of its major brands, to replace its retail-level discounting and fight sales losses to discount brands, and R.J. Reynolds followed suit. In the last several years, the major cigarette companies have increased their product prices by almost \$1.00 per pack. **Nationally, estimated smoking-caused health costs and lost productivity totals \$19.16 per pack.**

The average price for a pack of cigarettes nationwide is roughly \$6.18 (including statewide sales taxes but not local cigarette or sales taxes, other than NYC's \$1.50 per pack cigarette tax), with considerable state-to-state differences because of different state tax rates, and different manufacturer, wholesaler, and retailer pricing and discounting practices. AK, DE, MT, NH & OR have no state retail sales tax at all; OK has a state sales tax, but does not apply it to cigarettes; MN & DC apply a per-pack sales tax at the wholesale level; and AL, GA & MO (unlike the rest of the states) do not apply their state sales tax to that portion of retail cigarette prices that represents the state's cigarette excise tax.

Campaign for Tobacco-Free Kids, December 22, 2014 / Ann Boonn

For additional information see the Campaign's website at http://www.tobaccofreekids.org/what_we_do/state_local/taxes/.

Sources: Orzechowski & Walker, *Tax Burden on Tobacco*, 2013; media reports; state revenue department websites.



Senate Finance and Taxation Committee
Lewis and Clark Room
10:30 AM, Wednesday, February 4, 2015
SB 2322
Deb Knuth
North Dakota American Cancer Society Cancer Action Network (ACS CAN)
www.acscan.org

Chairman Cook and Vice Chair Laffen and members of the Senate Finance and Taxation Committee, my name is Deb Knuth and I am the director of government relations in North Dakota for the American Cancer Society Cancer Action Network (ACS CAN).

The American Cancer Society Cancer Action Network (ACS CAN) appreciates the opportunity to voice our support of SB 2322 to the committee.

Increasing cigarette excise taxes is an evidence-based policy approach to accomplishing the critical public goals of reducing smoking-related death and disease. Cigarette taxes are also a powerful economic tool, resulting in large savings in health care costs. This is why forty-seven states and the District of Columbia have increased their cigarette taxes since 2002; some states more than once. In 2013, three states including Massachusetts, Minnesota and Oregon increased their cigarette taxes and in 2014, Vermont, approved legislation increasing their cigarette tax.

In North Dakota, if we raised the cigarette tax by \$1.56 per pack, our state would annually increase revenue by \$43.51 million. More importantly, however, we would decrease youth smoking by 23.3% and keep 7,500 young people under the age of 18 from becoming adult smokers. Raising the cigarette tax would encourage 8,000 adult smokers to quit.

Projected public health benefits for North Dakota includes \$900,000 in Medicaid program savings and long-term health care cost savings from adult and youth smoking declines would total \$302.97 million. These facts illustrate the need for a price increase and also the need to intensify our efforts to ensure young North Dakotans never light a cigarette. ACS CAN believes revenue generated by this legislation should be directed toward public health goals such as the community health trust fund to fund chronic disease as well as other health needs in the state.

We are joined in our support of raising the state's cigarette tax, as well as raising state tax rates on other tobacco products (OTPs), by 40 health and business organizations in the Raise it for Health-ND coalition. Many of the members are in this room and will also testify in support of SB 2322.

ACS CAN also released polling results in January 2015, showing 69 percent of North Dakota voters favor increasing the state tobacco tax. ACS CAN commissioned the poll done by Public Opinion Strategies. The telephone survey was completed December 15-17, 2014, among 500 likely voters in North Dakota.

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Implementing strong tobacco control policies at the state level has been proven to reduce smoking and discourage new smokers. Through a three-pronged approach – higher tobacco taxes, comprehensive smoke-free laws, and fully funded tobacco prevention and cessation programs– experience and evidence shows that state tobacco control policies can help curb the tobacco burden in North Dakota.

Thank you for your time and consideration of this important issue

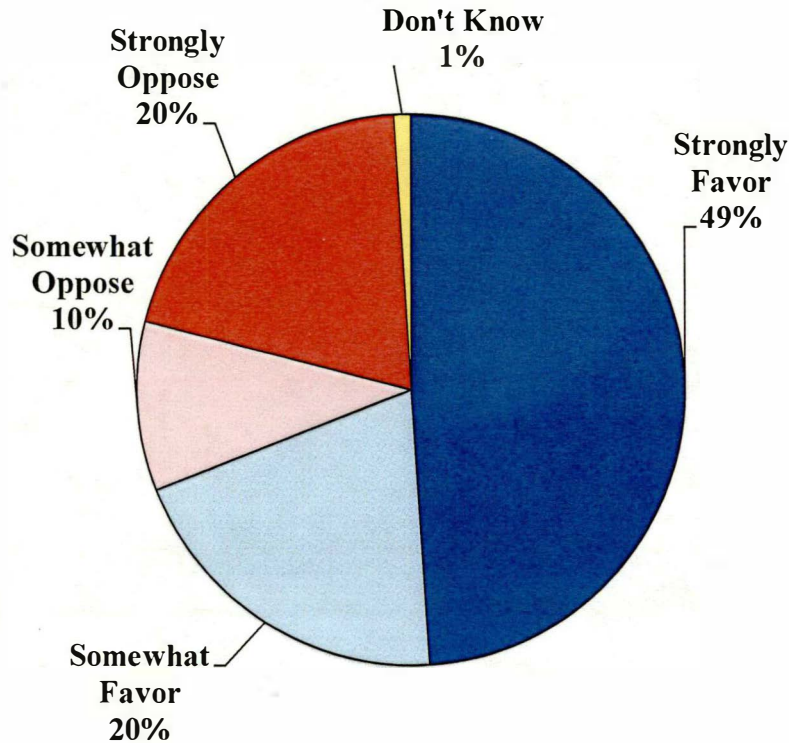
The American Cancer Society Cancer Action Network (“ACS CAN”) is the advocacy affiliate of the American Cancer Society (the “Society”). The Society is a nationwide, community-based, voluntary health organization dedicated to eliminating cancer as a major health problem by preventing cancer, saving lives and diminishing suffering from cancer, through research, education, advocacy, and service. The American Cancer Society is the largest voluntary health organization in the United States.

North Dakotans overwhelmingly favor an increase in the state tobacco tax.

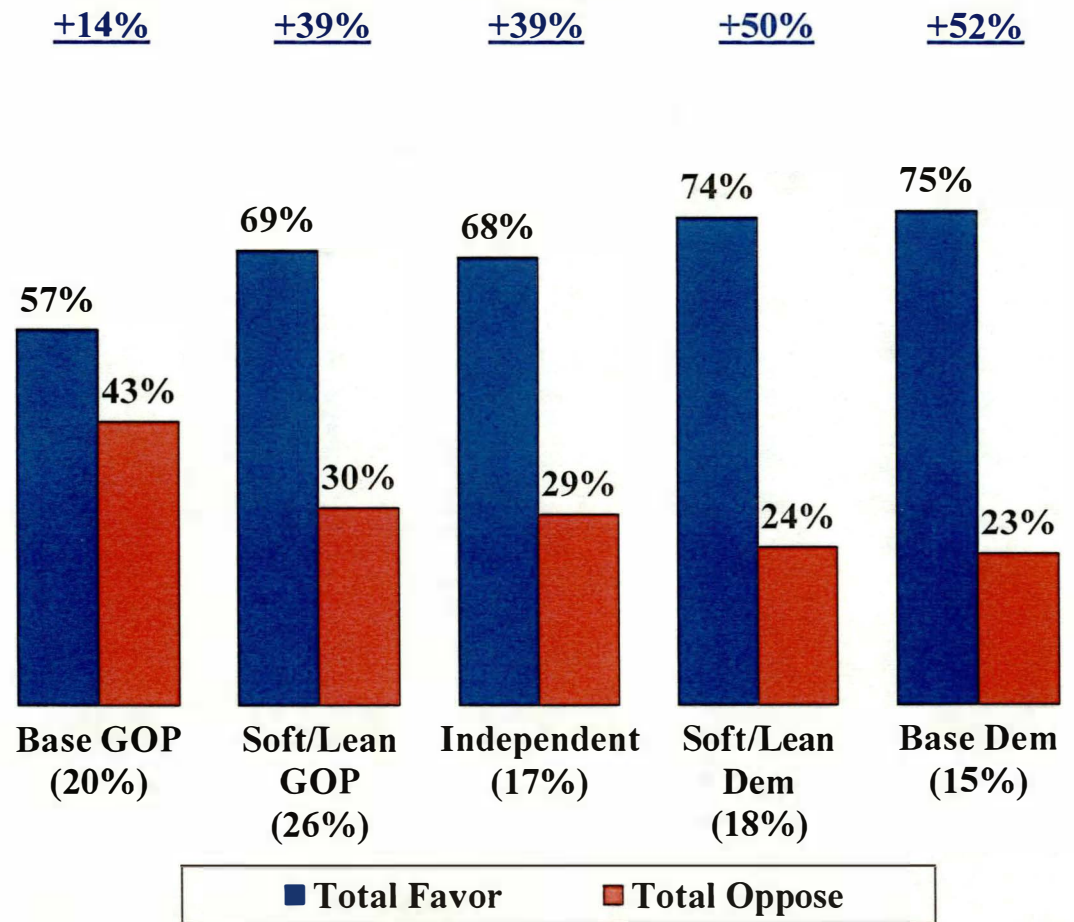
“As you may know, the state tobacco tax is currently forty-four cents per pack of cigarettes, which ranks forty-sixth lowest of fifty states. Also, North Dakota has not increased the state tobacco tax since 1993. Would you favor or oppose a proposal that would raise the state tobacco tax and use the revenue for cancer programs, heart programs, and other community health programs?”

Overall

Total Favor: 69%
Total Oppose: 30%



By Party



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**House Finance and Taxation Committee
SB 2322
February 4, 2015**

Chairman Cook and Committee Members, I am Katie Fitzsimmons and I serve as Communications Director for the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents, and medical students.

The North Dakota Medical Association is in support of SB 2322, increasing the state's tax on tobacco products. At its 2013 annual meeting, NDMA adopted a resolution supporting legislative action to raise North Dakota's tobacco tax as a proven way to prevent youth tobacco initiation, encourage a reduction of adult tobacco use, reduce health care costs, and provide an overall benefit to public health.

Physicians are on the front lines of trying to prevent and reduce tobacco use, counseling young patients not to start and supporting patients who have already started in their attempts to quit. Yet, they cannot do it alone. Increasing tobacco taxes is one of the leading recommendations for states to use in preventing and treating tobacco addiction.

In fact, in Minnesota, the most recent tobacco survey findings show that increasing the price of tobacco supports smokers in quitting. In 2013, the Minnesota Legislature passed a law that increased the tax on cigarettes by \$1.60 per pack. Smokers reported that this price increase influenced their smoking behavior, with 60.8 percent thinking about quitting, 48.1 percent cutting down on smoking and 44.2 percent making attempts at quitting. Among smokers who successfully quit in the past year, 62.8 percent reported that the price increase helped them make a quit attempt and 62.7 percent reported that it helped keep them from smoking again.

According to the Minnesota Youth Tobacco report, the percent of high school students using any of the conventional tobacco products in the past 30 days fell from 25.8 percent in 2011 to 19.3 percent in 2014, the sharpest drop ever recorded by the survey.

For all of the above stated reasons, NDMA supports SB 2322. I would be happy to answer any questions. Thank you.



6.

**Kristie Wolff – Program Manager, American Lung Association in North Dakota
Support for SB2322
North Dakota Senate Finance & Tax Committee**

February 4, 2015

Chairman Cook and members of the Senate Finance and Taxation Committee, my name is Kristie Wolff, I am the Program Manager for the American Lung Association in North Dakota.

Based on the American Lung Association’s mission to save lives by improving lung health and preventing lung disease through Education, Advocacy, and Research I am here to testify in support of SB2322.

On January 21, 2015, the American Lung Association released its 13th annual State of Tobacco Control Report. This report tracks progress on key tobacco control policies at the federal and state level. Grades are assigned based on whether laws are adequately protecting citizens from tobacco-related death and disease.

North Dakota received an “F” grade for tobacco taxes. At only 44 cents per pack, North Dakota’s cigarette tax is among the lowest in the nation. Higher prices for tobacco have been proven to be an effective tool to reduce smoking, especially among youth.

Let’s take Minnesota for example. In 2013, the Minnesota Legislature passed a law that increased the tax on cigarettes by \$1.60 per pack.

In 2014 The Minnesota Adult Tobacco Survey (MATS) was conducted, interviewing more than 9,000 Minnesotans age 18 and older by telephone. The results were released January 22, 2015. MATS findings showed that increasing the price of tobacco did support smokers in quitting.

The percentage of adult Minnesotans who smoke cigarettes dropped from 16.1% in 2010 to 14.4% in 2014 (approximately 580,000 adults).

Smokers reported that the \$1.60 per-pack tax increase on cigarettes influenced their smoking, with:

- 60.8 percent thinking about quitting;
- 48.1 percent cutting down on smoking; and
- 44.2 percent making quit attempts.

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Among smokers who successfully quit since the tax increase:

- 62.8 percent reported that the price increase helped them make a quit attempt
- 62.7 percent reported that it helped keep them from smoking again.

Youth rates saw an even more significant decrease based on the 2014 Minnesota Youth Tobacco Survey. This survey was conducted by the Minnesota Department of Health at 70 Public schools with an overall participation of 4,243 students in grades 6 through 12. The survey found:

- The percent of high school students who smoked cigarettes dropped from 18.1 percent in 2011 to 10.6 percent in 2014, the steepest decline recorded by the survey.
- The percent of high school students using any of the conventional tobacco products fell from 25.8 percent in 2011 to 19.3 percent in 2014, also the sharpest drop ever recorded by the survey. (Conventional products are cigarettes; cigars, cigarillos and little cigars; smokeless tobacco, and pipes.)

How do we compare?

North Dakota's Current Cigarette Tax



Average of Surrounding States: \$2.04

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National Averages:

National Average: \$1.54 per pack

Average of non-tobacco producing states \$1.68 per pack

Average tax of tobacco producing states: 48.5¢ per pack

Average of surrounding states: \$2.04 per pack

North Dakota's Youth Smoking Rates: (source: Campaign for Tobacco Free Kids)

ND High school students who smoke: 19.0%

ND Kids (under 18) who become new daily smokers each year: 600

Smoking kills more people than alcohol, AIDS, car accidents, illegal drugs, murders, and suicides combined, with thousands more dying from spit tobacco use. Of the roughly 270,000 kids who become new regular, daily smokers each year, almost a third will ultimately die from it.

Having one of the lowest tobacco taxes in the nation is not something that we should be proud of. It is time to raise the tobacco tax for the health of our state and to help protect our youth from a lifelong addiction to nicotine and the deadly consequences of tobacco. So today I am asking you to please give a do pass recommendation to SB2322.

Thank you.

North Dakota Report Card



STATE OF
TOBACCO
CONTROL 2015

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Tobacco Prevention and Control Program Funding: **A**

FY2015 State Funding for Tobacco Control Programs:	\$9,518,091
FY2015 Federal Funding for State Tobacco Control Programs:	\$1,205,818*
FY2015 Total Funding for State Tobacco Control Programs:	\$10,723,909
CDC Best Practices State Spending Recommendation:	\$9,800,000
Percentage of CDC Recommended Level:	109.4%
State Tobacco-Related Revenue:	\$64,300,000



Thumbs up for North Dakota for funding its state tobacco control program at or above the CDC-recommended level, one of only two states to do so this year.

*Includes tobacco prevention and cessation funding provided to states from the Centers for Disease Control and Prevention and U.S. Food and Drug Administration.

Smokefree Air: **A**

OVERVIEW OF STATE SMOKING RESTRICTIONS:

- Government Worksites: **Prohibited**
- Private Worksites: **Prohibited**
- Schools: **Prohibited**
- Child Care Facilities: **Prohibited**
- Restaurants: **Prohibited**
- Bars: **Prohibited**
- Casinos/Gaming Establishments: **Prohibited (tribal establishments exempt)**
- Retail Stores: **Prohibited**
- Recreational/Cultural Facilities: **Prohibited**
- Penalties: **Yes**
- Enforcement: **Yes**
- Preemption: **No**

Citation: N.D. CENT. CODE §§ 23-12-9 to 23-12-11 (2013).

Tobacco Taxes: **F**

CIGARETTE TAX:

Tax Rate per pack of 20: \$0.44

OTHER TOBACCO PRODUCT TAXES:

Tax on little cigars: **Equalized: Yes; Weight-Based: No**

Tax on large cigars: **Equalized: Yes; Weight-Based: No**

Tax on smokeless tobacco: **Equalized: No; Weight-Based: Yes**

Tax on pipe/RYO tobacco: **Equalized: Yes; Weight-Based: No**

Tax on Dissolvable tobacco: **Equalized: No; Weight-Based: Yes**

For more information on tobacco taxes, go to:
<http://slati.lung.org/slati/states.php>

Access to Cessation Services: **C**

OVERVIEW OF STATE CESSATION COVERAGE:

STATE MEDICAID PROGRAM:

Medications: **Covers all 7 recommended cessation medications***

Counseling: **Individual and group counseling covered**

Barriers to Coverage: **Duration limits, annual limits, minimal co-payments required, prior authorization required and use of counseling required to get medications**

Medicaid Expansion: **Yes**

STATE EMPLOYEE HEALTH PLAN(S):

Medications: **Covers all 7 recommended cessation medications***

Counseling: **Covers individual, group, online and phone counseling**

Barriers to Coverage: **Dollar limits apply to medications and counseling**

STATE QUITLINE:

Investment per Smoker: **\$7.05; the average investment per smoker is \$3.65**

OTHER CESSATION PROVISIONS:

Private Insurance Mandate: **Yes**

Tobacco Surcharge: **No prohibition or limitation on tobacco surcharges**

Citation: See North Dakota Tobacco Cessation Coverage page for specific sources.

*The 7 recommended cessation medications are: NRT Gum, NRT Patch, NRT Nasal Spray, NRT Inhaler, NRT Lozenge, Varenicline (Chantix) and Bupropion/Zyban.

North Dakota State Highlights:

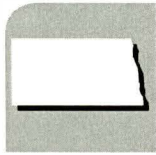


STATE OF
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CONTROL 2015



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SB 2322
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Tobacco use remains the leading cause of preventable death and disease in the United States. To address this enormous toll, the American Lung Association and its partners have committed to three bold goals:

1. Reduce smoking rates, currently at about 18 percent, to less than 10 percent by 2024;
2. Protect all Americans from secondhand smoke by 2019; and
3. Ultimately eliminate the death and disease caused by tobacco use.

The American Lung Association in North Dakota recognizes that these bold goals will only be met in North Dakota if these following three actions are taken by our elected officials:

1. Raise the state cigarette tax currently at 44 cents per pack to \$2.00 per pack;
2. Restrict the sale of e-cigarettes to minors;
3. Keep in place the current fully funded tobacco prevention program and smokefree law as voted on by the people of the state.

North Dakota's legislature only meets once every two years, so there was no legislative session in North Dakota in 2014. During this off-year, the American Lung Association in North Dakota worked to continue to educate decision makers about electronic cigarettes, which will likely be a big issue during the 2015 legislative session. The goal is to make sure the current law in North Dakota that prohibits the use of e-cigarettes anywhere smoking is not allowed remains intact and strong.

The American Lung Association in North Dakota is part of a broad based coalition called Raise it for Health ND. Currently, North Dakota's tobacco tax is one of the lowest in the nation and hasn't been increased since 1993. The goal of the coalition is to raise the tobacco tax during the 2015 North Dakota legislative session. The Raise it for Health ND coalition launched a statewide education campaign in 2014. The coalition has found that a large percentage of residents in the state that they have spoken with do support an increase in the state's tobacco tax and many were also appalled by how low the current cigarette tax, at only 44 cents per pack really is.

These goals can be reached by continued support, education, and outreach by the Raise it for Health ND Coalition members to both the public and elected officials and by the residents of North Dakota voicing their support for tobacco control issues. During the 2015 legislative session the American Lung Association in North Dakota and Raise it for Health ND Coalition will need compelling personal testimony along with strong data and information to move our goals forward.

North Dakota State Facts

Economic Costs Due to Smoking:	\$442,053,000
Adult Smoking Rate:	21.2%
High School Smoking Rate:	19.0%
Middle School Smoking Rate:	5.8%
Smoking Attributable Deaths:	877
Smoking Attributable Lung Cancer Deaths:	259
Smoking Attributable Respiratory Disease Deaths:	245

Adult smoking rate is taken from CDC's 2013 Behavioral Risk Factor Surveillance System. High school smoking rate is taken from the 2013 Youth Risk Behavioral Surveillance System. Middle school smoking rate is taken from the 2011 Youth Tobacco Survey.

Health impact information is taken from the Smoking Attributable Mortality, Morbidity and Economic Costs (SAMMEC) software. Smoking attributable deaths reflect average annual estimates for the period 2000-2004 and are calculated for persons aged 35 years and older. They do not take into account deaths from burns or secondhand smoke. Respiratory diseases include pneumonia, influenza, bronchitis, emphysema and chronic airway obstruction. The estimated economic impact of smoking is based on smoking-attributable health care expenditures in 2004 and the average annual productivity losses for the period 2000-2004.

To get involved with your American Lung Association, please contact:

American Lung Association in North Dakota
701-223-5613
www.Lung.org/northdakota



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STATE CIGARETTE EXCISE TAX RATES & RANKINGS

Overall All States' Average: \$1.54 per pack
Major Tobacco States' Average: 48.5 cents per pack
Other States' Average: \$1.68 per pack

State	Tax	Rank
Alabama	\$0.425	47th
Alaska	\$2.00	12th
Arizona	\$2.00	12th
Arkansas	\$1.15	30th
California	\$0.87	33rd
Colorado	\$0.84	34th
Connecticut	\$3.40	4th
Delaware	\$1.60	22nd
DC	\$2.50	11th
Florida	\$1.339	27th
Georgia	\$0.37	48th
Hawaii	\$3.20	5th
Idaho	\$0.57	42nd
Illinois	\$1.98	17th
Indiana	\$0.995	32nd
Iowa	\$1.36	26th
Kansas	\$0.79	36th
Kentucky	\$0.60	40th

State	Tax	Rank
Louisiana	\$0.36	49th
Maine	\$2.00	12th
Maryland	\$2.00	12th
Massachusetts	\$3.51	2nd
Michigan	\$2.00	12th
Minnesota	\$2.90	7th
Mississippi	\$0.68	37th
Missouri	\$0.17	51st
Montana	\$1.70	19th
Nebraska	\$0.64	38th
Nevada	\$0.80	35th
New Hampshire	\$1.78	18th
New Jersey	\$2.70	9th
New Mexico	\$1.66	21st
New York	\$4.35	1st
North Carolina	\$0.45	45th
North Dakota	\$0.44	46th
Ohio	\$1.25	29th

State	Tax	Rank
Oklahoma	\$1.03	31st
Oregon	\$1.31	28th
Pennsylvania	\$1.60	22nd
Rhode Island	\$3.50	3rd
South Carolina	\$0.57	42nd
South Dakota	\$1.53	24th
Tennessee	\$0.62	39th
Texas	\$1.41	25th
Utah	\$1.70	19th
Vermont	\$2.75	8th
Virginia	\$0.30	50th
Washington	\$3.025	6th
West Virginia	\$0.55	44th
Wisconsin	\$2.52	10th
Wyoming	\$0.60	40th
Puerto Rico	\$2.23	NA
Guam	\$3.00	NA
Northern Marianas	\$1.75	NA

Table shows all cigarette tax rates in effect by January 1, 2015 (MN inflation adjustment on 1/1/2015). Since 2002, 47 states, DC, and several U.S. territories have increased their cigarette tax rates more than 110 times. The states in **bold type** have not increased their cigarette tax since 2005 or earlier. Currently, 30 states, DC, Puerto Rico, the Northern Marianas, and Guam have cigarette tax rates of \$1.00 per pack or higher; 15 states, DC, and Guam have cigarette tax rates of \$2.00 per pack or higher; six states and Guam have cigarette tax rates of \$3.00 per pack or higher; and one state (NY) has a cigarette tax rate more than \$4.00 per pack. Tobacco states are KY, VA, NC, SC, GA, and TN. States' average includes DC, but not Puerto Rico, other U.S. territories, or local cigarette taxes. The median tax rate is \$1.36 per pack. AK, MI, MN, MS, TX, and UT also have special taxes or fees on brands of manufacturers not participating in the state tobacco lawsuit settlements (NPMs).

The highest combined state-local tax rate is \$6.16 in Chicago, IL, with New York City second at \$5.85 per pack. Other high state-local rates include Evanston, IL at \$5.48 and Anchorage, AK at \$4.39 per pack. For more on local cigarette taxes, see: <http://tobaccofreekids.org/research/factsheets/pdf/0267.pdf>.

Federal cigarette tax is \$1.01 per pack. From the beginning of 1998 through 2002, the major cigarette companies increased the prices they charge by more than \$1.25 per pack (but also instituted aggressive retail-level discounting for competitive purposes and to reduce related consumption declines). In January 2003, Philip Morris instituted a 65-cent per pack price cut for four of its major brands, to replace its retail-level discounting and fight sales losses to discount brands, and R.J. Reynolds followed suit. In the last several years, the major cigarette companies have increased their product prices by almost \$1.00 per pack. **Nationally, estimated smoking-caused health costs and lost productivity totals \$19.16 per pack.**

The average price for a pack of cigarettes nationwide is roughly \$6.18 (including statewide sales taxes but not local cigarette or sales taxes, other than NYC's \$1.50 per pack cigarette tax), with considerable state-to-state differences because of different state tax rates, and different manufacturer, wholesaler, and retailer pricing and discounting practices. AK, DE, MT, NH & OR have no state retail sales tax at all; OK has a state sales tax, but does not apply it to cigarettes; MN & DC apply a per-pack sales tax at the wholesale level; and AL, GA & MO (unlike the rest of the states) do not apply their state sales tax to that portion of retail cigarette prices that represents the state's cigarette excise tax.

Campaign for Tobacco-Free Kids, December 22, 2014 / Ann Boonn

For additional information see the Campaign's website at http://www.tobaccofreekids.org/what_we_do/state_local/taxes/.

Sources: Orzechowski & Walker, *Tax Burden on Tobacco*, 2013; media reports; state revenue department websites.

1400 I Street NW - Suite 1200 - Washington, DC 20005
Phone (202) 296-5469 · Fax (202) 296-5427 · www.tobaccofreekids.org

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Resolution to Raise North Dakota's Tobacco Tax

WHEREAS, tobacco use remains North Dakota's leading preventable cause of death, killing more people than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined;

WHEREAS, 19.4% (7,400) of youth in North Dakota smoke, and 500 North Dakota kids (under 18) become new daily smokers each year, of whom more than 11,000 will die prematurely because of this addiction;

WHEREAS, 21.9% (116,600) of adults in North Dakota smoke and nearly 800 North Dakotans will die each year from smoking and smoking-related disease;

WHEREAS, tobacco use in North Dakota imposes economic burden, with smoking-caused direct-healthcare costs amounting to \$247 million each year, smoking-caused productivity losses approximating \$192 million annually, and each household paying \$574 per year in state and federal taxes from smoking-caused government expenditures;

WHEREAS, each year, the North Dakota government Medicaid payments directly related to tobacco use is \$47 million;

WHEREAS, the current cigarette tax of \$0.44 per pack, pipe tobacco and cigar tax at 28% of the wholesale purchase price, and snuff tax at \$0.60 per ounce, ranking North Dakota one of the four cheapest tobacco states in the nation, is dangerous to our state's citizens;

WHEREAS, the legislative body in North Dakota has not enacted legislation to increase our state's tobacco taxes in 20 years, since 1993;

WHEREAS, according to the 2012 US Surgeon General's Report, increasing tobacco excise taxes have proven highly effective in preventing initiation among youth, reducing tobacco use by promoting cessation among current users, discouraging relapse among former users, and reducing consumption among those who continue to use tobacco;

BE IT THEREFORE RESOLVED, as a proven way to prevent youth tobacco initiation, encourage a reduction of adult tobacco use, reduce health care costs, and provide an overall benefit to public health, that the undersigned organization endorses legislative action to be taken during the 64th Legislative Assembly to raise North Dakota's cigarette tax to a minimum of \$2.00 per pack and all other tobacco products by a proportional amount.

BE IT FURTHER RESOLVED, that the undersigned organization will:

- Inform its members, affiliates, and partners and, if possible, the general public of its endorsement of this Resolution; and,
- Inform the Governor and members of the General Assembly of its endorsement of this Resolution, to the extent permitted by law, and urge its members to do the same.

7.2
SB2322
2.4.15

Organization: Custer Health Board Number of Members: _____

Contact Person: Brady Weaver ^{of Health} Title: Tobacco Program Mgr.

Address of Organization: 210 2nd Ave NW

City, State Zip: Mandan ND 58554

Phone: 701 661 3370 Email: _____

Authorized Signature: *John H. Hume* Date: 2-7-14

The logo features a blue outline of a cloud on the left side. To its right, the words "Tobacco Free" are written in a large, bold, black sans-serif font. Below "Tobacco Free", the words "North Dakota" are written in a black, cursive script font.

Tobacco Free North Dakota

#8

Testimony in support of Senate Bill 2322
From Valerie Schoepf
Board member, Tobacco Free North Dakota
To Senate Finance & Tax Committee
Senator Dwight Cook, Chair
February 4, 2015

Good morning, I'm Valerie Schoepf and I live here locally. I'm a board member with Tobacco Free North Dakota and also vice president of the Bismarck Tobacco Free Coalition. I'm here today in support of Senate Bill 2322 that would raise the tobacco tax by \$1.56.

As you can see, I am relatively pregnant, and so I can further preface my comments by sharing that we won't be accepting cigars, Cuban or candy, when this baby is born. With that, let me tell you a bit more about my growing family and why I'm involved with this issue.

I have a 4-year old daughter, Frances. She's of the character that (with no coaching involved) she'll approach someone smoking and say, "That isn't healthy. Why do you do that?" This stopped one gal in her tracks who then said, "You're right, and I don't know." Frances is wise for her age, and I hope that her impression of tobacco as a 4-year old holds steady over time.

I also have a 3-year old son, John. He's of the character to generally plead the fifth given most questions be it his name or age. He is thoughtful and sensitive yet has been known to enter conversations out of left field in sharing, "My grandpa Ray died, and my name is John Raymond."

So there it is – my kids and my dad, Raymond Waldock, are why I'm here today. I was 14 years old and a freshman in high school when my dad passed away from lung and brain cancer. He got hooked growing up in Parshall, ND, and was a lifelong smoker – who wished he wasn't.

Like my dad, a majority of smokers want to quit. To support this and prevent youth from starting up, the most effective approach has three components: price, tobacco-free environments and education. Of those three components, significant price increases are shown to have the most impact, and immediate results. Since Minnesota increased theory tax on cigarettes by \$1.60 per pack, smokers reported that this price increase influenced their smoking behaviors, with 60.8 percent thinking about quitting, 48.1 percent cutting down on smoking and 44.2 percent making attempts to quit. Among smokers who successfully quit in the past year, 62.8 percent reported that the price increase helped them make a quit attempt, and 62.7 percent reported that it helped keep them from smoking again.

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North Dakota is doing great on the environmental and educational components, but to really drive smoking rates down it's going to take that third leg: a significant increase to the cost of tobacco. And fortunately, when an increase like the one represented by today's bill prompts people to quit, North Dakota's free and highly effective quit-line is available to all.

My dad died in 1996, and since North Dakota's tobacco tax hasn't changed since 1993, he actually was of the era of the 44-cent tax rate. That was decades ago. Looking to the future, my family's obsession will soon be our newborn – we'll do all we can to protect and provide for her well being. So to wrap up, I have two questions: How long will North Dakota sell tobacco at a deflated price? The answer is in your hands. And second, when do our babies stop being our babies? I don't think they do. In less than 10 years, Frances and John will be teenagers being targeted to try tobacco – and they'll still be my babies. That's no different than the thousands of middle and high school students throughout North Dakota who are someone's babies now – right now they are susceptible to cheap tobacco, and their parents want to protect their well-being as well.

To conclude, I support Senate Bill 2322 and urge you to also support raising North Dakota's tobacco tax, which will make a healthy difference.

Valerie Schoepf, Bismarck, ND
(651) 455-5176 / valerieschoepf@hotmail.com

#9
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Senate Bill 2322
Senate Finance and Taxation Committee
Testimony - June Herman, American Heart Association

Good morning Chairman Cook and members of the Senate Finance and Taxation Committee. For the record, I am June Herman, Regional Vice President of Advocacy for the American Heart Association. I am here today to ask for your Do Pass recommendation on Senate Bill 2322, and support of an amendment to direct a portion of the new revenue to critical healthcare needs. As you have heard, increasing the price of tobacco products does reduce tobacco use. It is for that reason we support a significant increase in the North Dakota tobacco tax.

High blood pressure and tobacco use are leading risk factors for heart disease and stroke, North Dakota's leading killers. Stroke is the leading cause of admission to long term care. When we turn to our state's stroke treatment data, the toll of these risk factors are evident – on the individual and their families, our healthcare system, and to our communities.

Key Data:

- 81% of ND strokes are under age 85, with 1/3 of those strokes under age 65.
- Only 1% of those ND hypertension cases were being treated prior to stroke for HBP
- 69% of Americans who have a first heart attack have blood pressure over 140/90.

Benchmark Group	Time Period	Hypertension	Smoker
All ND Hospitals	2011	74.9%	17.1%
Ischemic Stroke Diagnosis	2012	75.8%	18.8%
	2013	72.5%	20.9%

To provide perspective of why reducing leading risk factors is important to our state: HBP damages the walls of the arteries. If you have high blood pressure, the force exerted on your arteries is too high. It's so high that it creates microscopic tears in the artery walls that then turn into scar tissue. Damaged arteries accumulate circulating materials such as cholesterol, platelets, fats and plaque builds up. Smoking makes platelets stickier, the arteries become less elastic and can spasm. A deadly combination with significant healthcare impact.

SB 2322 proposes a tax increase that can reduce tobacco use in North Dakota. It also provides revenue to the state from all who buy tobacco products here. If amended, the bill can also address essential areas of health needs, such as stroke and cardiac prevention and care. Raise our ND tobacco tax for the health of North Dakotans.

The logo for Tobacco Free North Dakota features a stylized blue cloud-like shape on the left, composed of several overlapping loops. To the right of this shape, the words "Tobacco Free" are written in a large, bold, black sans-serif font. Below "Tobacco Free", the words "North Dakota" are written in a black, cursive script font.

Tobacco Free North Dakota

Testimony in support of Senate Bill 2322
From TJ Jerke
Education & Advocacy, Tobacco Free North Dakota
To Senate Finance & Tax Committee
Senator Dwight Cook, Chair
February 4, 2015

Chairman Cook and Members of the Senate Finance & Tax Committee, My name is TJ Jerke. I am here on behalf of Tobacco Free North Dakota in support of Senate Bill 2322.

Tobacco Free North Dakota is an expansive coalition of healthcare organizations throughout the state. Its mission is to improve and protect the public health of all North Dakotans by reducing the serious health and economic consequences of tobacco use, which, as you know, is the state's number one cause of preventable disease and death.

It is undeniable that increasing the state's low tobacco tax will decrease smoking rates among our youth and adult smoking populations.

This is illustrated as we look at the bill's fiscal note. You'll see the North Dakota Tax Department estimates that this bill will increase total cigarette and tobacco tax revenue by an estimated \$121.7 million in the next biennium. Based on state data, and market trends, the Tax Department assumes a drop in cigarette consumption of approximately 16% and a drop in consumption of other tobacco products of 15% as a result of this good public policy. What's interesting, is comparing the state Tax Department's analysis of this bill, to a bill heard yesterday, which we know is asking the Legislative Assembly to increase the state's tobacco tax at a rate less than what is proposed in Senate Bill 2322. The other proposal's fiscal note from the state tax department concludes it will increase total cigarette and tobacco tax revenue by an estimated \$138.6 million in the next biennium – assuming a drop in cigarette consumption of approximately 11% and a drop in consumption of other tobacco products of 15%. Comparing the two bills, the North Dakota Tax Department data suggests both increases will decrease cigarette consumption, but, more importantly, the higher tax proposal will decrease cigarette consumption by 5% more.

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I've heard some consternation over tobacco sales on North Dakota Native American reservations. According to the North Dakota Department of Health the price of one pack of Marlboros was comparable, if not higher, than non-reservation prices.

	Tax per pack	Pack of Marlboros
ND Non-reservation Land	\$0.44	\$4.56
Standing Rock	\$0.44	\$4.50
Turtle Mountain	\$0.05	\$4.55
Three Affiliated (Ft. Berthold)	In progress	\$5.35-\$6.00
Spirit Lake	N/A	\$5.35-\$6.00

Based on research of staff from Executive Committee and N.D. Department of Health, Fall 2014 and January 2015.

I've also heard concern about losing out-of-state business by raising North Dakota's tax. I want to make it perfectly clear that while we hope you will help keep thousands of our youth from smoking by raising the tobacco tax, the proposal before you would put the state's tax at \$2.00 per pack, \$0.90 lower than our neighbor to the east, for instance.

My last point is that you have already heard the data from our neighbor to the east, and the overwhelming decrease in smoking directly connected to their most recent effort to raise their tobacco tax. But what you may not know is that the Tobacco industry, and convenience stores and retailers in the same state, profited from the tobacco tax increase by over-shifting prices. An observational study of tobacco retail prices was performed in a sample of 61 convenience stores in Minnesota, North Dakota, South Dakota and Wisconsin. Six rounds of data were collected between May 2013 and January 2014. In each round, purchases were made at the same stores for the same four tobacco products. The study, titled "Tobacco Product Prices Before and After a Statewide Tobacco Tax Increase" found evidence of tax over-shifting by the cigarette industry, which is inconsistent with many of the arguments made by the tobacco industry as it works against tobacco tax increases through aggressive lobbying. The industry commonly argues that tobacco tax increases are regressive, result in smuggling, and are unfair to tobacco users. However, evidence pointing to over-shifting suggests that the tobacco industry is not genuinely concerned about these speculated outcomes of tobacco tax increases.

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Tobacco product prices before and after a statewide tobacco tax increase

Betsy Brock,¹ Kelvin Choi,² Raymond G Boyle,³ Molly Moilanen,³ Barbara A Schillo³

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ABSTRACT

Background In 2013, the State of Minnesota Legislature passed a tobacco tax increase that increased the combined cigarette excise and sales tax by US\$1.75 (from US\$1.60 to US\$3.35) and increased the tax on non-cigarette tobacco products from 70% to 95% of the wholesale price. The current study explores the change in tobacco prices in retail locations and whether the tax increase was fully passed to consumers.

Methods An observational study of tobacco retail prices was performed in a sample of 61 convenience stores in Minnesota, North Dakota, South Dakota and Wisconsin. Six rounds of data were collected between May 2013 and January 2014. In each round, purchases were made at the same stores for the same four tobacco products (Camel Blue cigarettes, Marlboro Gold cigarettes, Grizzly Wintergreen moist smokeless tobacco and Copenhagen Wintergreen moist smokeless tobacco).

Results For all studied tobacco products, prices in Minnesota increased significantly after the tax increase (Round 1–Round 6). After controlling for price changes in neighbouring states, the average price difference in Minnesota for the two cigarette brands increased by US\$1.89 and US\$1.81, which are both more than the US\$1.75 tax increase. For moist smokeless, the average price difference increased by US\$0.90 and US\$0.94. Significant price changes were not observed in the comparison states. After the introduction of the minimum moist smokeless tax, a significantly higher proportion of Minnesota stores offered price promotions on smokeless tobacco.

Conclusions A large tobacco tax resulted in an average retail cigarette price exceeding the tax, suggesting the industry over-shifted the cigarette tax increase to consumers in Minnesota. The findings support the known public health benefit of tobacco tax increases while highlighting the need for additional information about how, or if, tobacco companies use price promotions to blunt the impact of tax increases.

BACKGROUND

Each year, US tobacco companies spend billions of dollars marketing and promoting their products. In 2011, tobacco companies spent a combined US\$8.8 billion on advertising and promotion in the USA^{1 2}. More than 80% of this promotional budget was spent on price discounting, specifically, payments made to tobacco wholesalers and retailers that, ultimately, reduce the price of tobacco to consumers at the point of sale.^{1 2} Evidence from tobacco industry documents³ indicates that tobacco companies are well aware that as prices increase, tobacco use declines especially among younger smokers. Further, price promotions became increasingly common in the 1980s and 1990s in response

to tobacco tax increases, which the tobacco industry knew could lead to significant reductions in tobacco use.³ While we know about these price promotions from the tobacco industry's own documents and required submissions to the US Federal Trade Commission, less is known about how much, if any, these price promotions are used to reduce the cost of tobacco products for consumers after a tax increase. This study aims to take advantage of a unique opportunity to study tobacco industry pricing strategies after a significant tobacco tax increase.

Even as the tobacco industry actively uses price discounting, there is evidence to suggest that it also intentionally increases prices on top of new tobacco taxes, also called over-shifting. By over-shifting, the industry can increase profits while effectively shifting blame for the entire price increase to 'the government'.⁴ There are a relatively small number of studies that have examined tobacco industry manipulations of pricing in relation to tax increases. Several studies have found that tobacco companies do over-shift tobacco tax increases to consumers.^{5–8} In a recent paper, Gilmore *et al*⁹ found that, on average, tobacco taxes in the UK are over-shifted by tobacco companies, but for ultra-low-priced cigarette brands the tax may not be fully passed on to consumers. Most studies that report over-shifting are relatively recent and focus on high-income countries. Fewer studies have reported evidence that tobacco companies absorb some of the tax increase and pass it on a lower rate, also called under-shifting,^{10 11} or pass on the exact amount of tobacco tax increases, also called fully-shifting, to consumers.¹²

In 2013, the Minnesota Legislature passed a tobacco tax increase that more than doubled the combined cigarette excise and sales tax—from US\$1.60 per pack (US\$1.23 in tobacco tax and US\$0.37 in sales tax) to US\$3.35 per pack (US\$2.83 in tobacco tax and US\$0.52 in sales tax). The tax on other tobacco products increased from 70% to 95% of wholesale price. In an effort to reach tax parity, a minimum tax on moist smokeless tobacco was created that is equivalent to the cigarette excise tax (US\$2.83). In Minnesota, the excise tax on all tobacco products is collected at the wholesale level. A set fee in lieu of sales tax on cigarettes is also collected at the wholesale level. Sales tax on non-cigarette tobacco products is collected at the retail level as a per cent (between 6.875% and 7.875% depending on locality) of purchase price. The tobacco tax increase took effect on 1 July 2013; the minimum moist smokeless tobacco tax took effect on 1 January 2014. This increase took Minnesota from having the 27th highest state

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Research paper

cigarette excise tax to the seventh highest in the nation, and made the Minnesota cigarette tax the highest in the region.¹³

This study's comparison states of North Dakota, South Dakota and Wisconsin all have lower taxes on cigarette and non-cigarette tobacco products than Minnesota. North Dakota has a combined cigarette and sales tax of US\$0.64 (US\$0.44 in cigarette tax and US\$0.20 in sales tax). In North Dakota, smokeless tobacco is taxed at US\$0.16 per ounce; a sales tax of 5% is also applied. South Dakota has a combined cigarette and sales tax of US\$1.75 (US\$1.53 in cigarette tax and US\$0.22 in sales tax). Smokeless tobacco is taxed at 35% of wholesale price; a sales tax of 4% is also applied. Finally, in Wisconsin, the combined cigarette and sales tax is US\$2.87 (US\$2.52 in cigarette tax and US\$0.35 in sales tax). Smokeless tobacco is taxed at 71% of the manufacturer's price and an additional 5% in sales tax is applied.^{14 15} During the study period, there were no relevant statewide policy changes (eg, tobacco tax increases or smoke-free laws) in the comparison states.

The current study attempted to answer three primary research questions: First, what happens to the retail price of cigarettes and smokeless tobacco after a sizeable statewide excise tax increase? Specifically, is there evidence of tax shifting (over-shift, under-shift or fully-shift) to the consumer? Second, following a tax increase how much variation in price is observed among the same tobacco product and what appears to account for any variation? Finally, do tobacco price promotions increase in response to excise tax increases? Repeated tobacco purchases were conducted before and after the tax increase to answer these research questions. We believe that this is the first study to examine both the real world impact of a substantial tobacco tax increase on retail prices paid as well as incidence of retail tobacco price promotions. Tobacco tax increases are one of the most powerful policy options available to reduce tobacco use. Substantial evidence indicates that tobacco tax increases decrease smoking rates.^{16 17} Understanding how the tobacco industry responds to tobacco tax increases and how this affects the actual prices paid by consumers is an essential part of ensuring that tax increases are fully and effectively implemented.

METHODS

An observational study of tobacco retail prices was conducted in a sample of 61 convenience stores in Minnesota (n=48) and the neighbouring states of North Dakota (n=2), South Dakota (n=2) and Wisconsin (n=9). Convenience stores were chosen as the focus because in the USA they represent both the largest percent of tobacco retailers by type and the channel through which the majority of tobacco sales occur.^{18 19} The sample was generated through a combination of random and purposive sampling. In Minnesota, data were collected in seven regions throughout the state. One of the seven Minnesota regions was the metropolitan area of Minneapolis and St. Paul. In this region, due to the large number of convenience stores, a random sample of eight stores was generated using city lists of tobacco licenses. In the remaining six Minnesota regions, convenience stores were purposively selected to ensure geographic coverage, representation of large chain stores and a mixture of chain versus independent stores. In the neighbouring states, stores were purposively selected to represent convenience store chains that exist on both sides of the border.

Data were collected in six rounds between May 2013 and January 2014. Rounds 1 and 2 were conducted during the weeks of 27 May 2013 and 24 June 2013, respectively. Both rounds were conducted before the Minnesota excise tax increase went into effect on 1 July 2013. Round 3 was completed

1 week after the tax increase, during the week of 8 July 2013; and Round 4 was conducted during the week of 29 July 2013 (4 weeks after the tax increase took effect). Round 5 was conducted during the week of 26 August 2013; and Round 6 was conducted during the week of 13 January 2014, which was 2 weeks after the minimum moist smokeless tobacco tax went into effect.

In each round, trained data collectors visited the same convenience stores during each predetermined week period. Collectors purchased the same four tobacco products. Two cigarette products were studied, both of which are considered premium brands: Marlboro Gold cigarettes (previously called Marlboro Lights) and Camel Blue cigarettes (previously called Camel Lights). Two moist smokeless tobacco products were studied: Copenhagen Wintergreen moist smokeless tobacco and Grizzly Wintergreen moist smokeless tobacco. Historically, Copenhagen has been seen as a premium brand and Grizzly as a value brand. These tobacco products were chosen because they hold the largest market shares in the cigarette and moist smokeless tobacco categories for the metropolitan area of Minneapolis and St. Paul, according to Nielsen Convenience Track market data.²⁰ During each visit, collectors recorded the date and the name and address of the store visited. For each product purchased, product name, price promotions offered (if any), and final price paid (after any price promotions) were documented. For this study, only those price promotions that were automatically received by consumers during purchase were considered. These markdowns often took the form of a set amount off which was clearly marked on the packaging (figure 1). Other times, the promotion was reflected on the receipt as a set amount off. We did not consider consumer coupons. For each assessment, receipts were collected to ensure accuracy. A standardised data-collection form was used to record all information. For all analyses, we only considered the final price paid after any price promotions were applied.

To examine price variation among Minnesota stores, convenience stores were geocoded and linked to Census data at the census tract level. Additionally, the Minnesota stores were coded as either chain or independent, based on the *Convenience Store News* publication titled 'The Top 100 Convenience Stores.'²¹

ANALYSIS

Two-sample independent t tests were conducted to compare the final price paid for each product obtained in a Minnesota store and stores in bordering states (North and South Dakota and Wisconsin) at each round. Repeated-measure models were used in subsequent analyses to account for the correlation of measurements from the same store. An ordinal categorical variable round (which took values between Rounds 1 and 6) was included to test the statistical significance of changes in final price paid over time. A Round×State (ie, Minnesota vs bordering states) interaction term was used to examine whether changes in final price paid for each product over time differed between Minnesota and bordering states. We also performed a difference-of-differences analysis on changes in product price by state for each product. Specifically, we first estimated price changes in each product between pretax (Round 1–2) and post-tax increases (Round 3–6), and then estimated the difference in price changes in each product by state (Minnesota minus comparison states).

For the Minnesota stores, a Round×Store Type (ie, chain vs independent) interaction term was used to examine whether changes in final price paid for each product over time differed by store type, with and without adjusting for the amount

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Figure 1 Example of the type of price promotion observed and analysed.

discounted through price promotions. Finally, the associations were examined between socioeconomic characteristics of the census tract where the Minnesota stores were located and final price paid for each product. Separate models were used for each socioeconomic characteristic because of the high correlations between these variables. All analyses were conducted in 2014 using PC-SAS V9.3, and repeated measure models were estimated using PROC MIXED.

RESULTS

In Minnesota, after implementation of the tax increase (Round 3–6), the average prices paid for both of the cigarette products and both of the smokeless tobacco products were significantly higher than average prices paid before the tax increase (Round 1–2; $p < 0.001$; table 1). In contrast, average prices paid for the cigarette and smokeless tobacco products did not change significantly during the same period of time in comparison states ($p > 0.05$).

After controlling for price changes in comparison states, the average pack price paid for both cigarette products increased by more than the amount of the actual tax increase. Between pre-tax (Round 1–2) and post-tax rounds (Round 3–6), the average pack price of Marlboro Gold in Minnesota increased by US \$1.89 ($p < 0.0001$), which is US\$0.14 more than the combined tobacco and sales tax increase of US\$1.75. Similarly, the average pack price of Camel Blue in Minnesota increased by US\$1.81 beyond comparison states ($p < 0.001$), which is US\$0.06 beyond the tax increase.

In Minnesota, the average price paid for both moist smokeless tobacco products also increased significantly after the tax increase. Significant price changes were not observed in the comparison states. The average price change in Copenhagen Wintergreen smokeless in Minnesota between pretax (Round 1–2) and post-tax rounds (Round 3–6) was US\$0.90 beyond the average price changes in the product in comparison status ($p < 0.0001$). Likewise, the average price increase of Grizzly Wintergreen smokeless in Minnesota was US\$0.94 beyond that of the product in comparison states ($p < 0.0001$). Furthermore, in Round 6, after the

implementation of the minimum moist smokeless tobacco tax, average prices paid for both of the moist smokeless tobacco products were significantly higher than in Round 5 ($p < 0.001$). In Minnesota, the excise tax on non-cigarette products is an ad valorem tax based on the per cent of wholesale price. The tax amount fluctuates as the wholesale price of the product changes. Since the wholesale prices were not available to the researchers, it was not possible to determine if the tax on these products was under-shifted, over-shifted or fully-shifted to consumers.

For all studied tobacco products, a great deal of variation was observed in prices paid across Minnesota stores. In Round 6, the difference between the highest and lowest price paid for a pack of Camel Blue cigarettes in Minnesota was US\$2.21. For Copenhagen Wintergreen, this difference was US\$3.10 and for Grizzly Wintergreen it was US\$2.62. The range for Marlboro Gold cigarettes was the smallest observed at US\$0.81 in Round 6. We hypothesised that this variation might be due to store type (chain vs independent). For Marlboro Gold cigarettes, there was no significant difference observed between the average prices paid at chain versus independent stores in any of the rounds and over time (Round×StoreType interaction $p = 0.403$; figure 2). Camel Blue cigarettes were consistently less expensive in chain versus independent store (t test $p < 0.05$ for Rounds 1–5) except in Round 6 (t test $p = 0.51$). This price difference also seemed to be larger after the tax increase (Round×StoreType interaction $p = 0.001$). For Copenhagen smokeless tobacco, no significant difference was observed for prices paid in chain versus independent stores for any of the rounds (Round×StoreType interaction $p = 0.3075$; figure 3). The only significant difference observed for Grizzly was in Round 6 ($p = 0.006$) with a higher average observed price at chain stores (Round×StoreType interaction $p = 0.01$).

Another factor we hypothesised might contribute to price variation was the presence of price promotions. Price promotions were observed in all rounds of data collection and are summarised in table 2. For this study, we considered only those price promotions that were offered directly to consumers. This usually took the form of a set amount off the price, which was

Table 1 Average prices paid (US\$), ranges (US\$) and p values for tobacco products purchased before and after tax increase: Minnesota versus comparison states

	Round 1 (preincrease) Week of 27 May 2013		Round 2 (preincrease) Week of 24 June 2013		Round 3 (postincrease) Week of 8 July 2013		Round 4 (postincrease) Week of 29 July 2013		Round 5 (postincrease) Week of 26 August 2013		Round 6 (postincrease, postminimum smokeless tax) Week of 13 January 2014	
	Minnesota	Comparison States	Minnesota	Comparison States	Minnesota	Comparison states	Minnesota	Comparison states	Minnesota	Comparison states	Minnesota	Comparison states
Marlboro Gold cigarettes												
Average Price	6.04	7.04	6.07	7.05	7.94*	7.04	7.93*	7.04	7.95*	7.04	8.05*	7.13
Range	(5.76–6.75)	(4.88–8.29)	(5.43–6.85)	(4.88–8.29)	(7.66–8.58)	(4.96–8.29)	(7.08–8.58)	(4.96–8.29)	(7.68–8.58)	(4.95–8.29)	(7.77–8.58)	(5.04–8.22)
p Value†	<0.001		<0.001		<0.001		<0.001		<0.001		<0.001	
Camel Blue cigarettes												
Average Price	5.39	6.37	5.37	6.38	7.15*	6.61	7.04*	6.33	7.24*	6.23	7.48*	6.50
Range	(4.50–6.50)	(4.36–8.29)	(4.50–6.56)	(3.56–8.29)	(6.33–8.31)	(4.47–8.29)	(6.20–8.31)	(4.47–8.29)	(6.33–8.59)	(4.47–8.29)	(6.53–8.74)	(3.91–8.17)
p Value†	<0.001		<0.001		0.010		0.002		<0.001		<0.001	
Copenhagen Wintergreen smokeless												
Average Price	4.39	4.52	4.37	4.68	5.00*	4.47	5.10*	4.45	5.11*	4.44	6.24*	4.74
Range	(3.47–6.29)	(2.78–6.11)	(3.37–6.29)	(2.78–7.86)	(3.42–7.29)	(2.78–5.27)	(4.39–7.29)	(2.78–5.27)	(3.45–7.47)	(2.42–6.78)	(4.29–7.39)	(2.42–5.78)
p Value†	0.097		0.2388		0.026		0.0067		0.0098		<0.0001	
Grizzly Wintergreen smokeless												
Average Price	4.30	4.59	4.27	4.45	4.90*	4.47	4.98*	4.46	4.98*	4.54	6.37*	4.42
Range	(3.47–5.05)	(3.11–6.00)	(3.47–5.05)	(3.11–5.27)	(3.47–6.77)	(3.11–5.27)	(3.44–6.77)	(3.11–5.27)	(3.99–6.29)	(3.11–5.80)	(4.56–7.18)	(2.68–5.32)
p Value†	0.097		0.239		0.026		0.007		0.010		<0.001	

*Significantly different from Round 1 measurement of the same state (Minnesota or comparison states); $p < 0.001$.

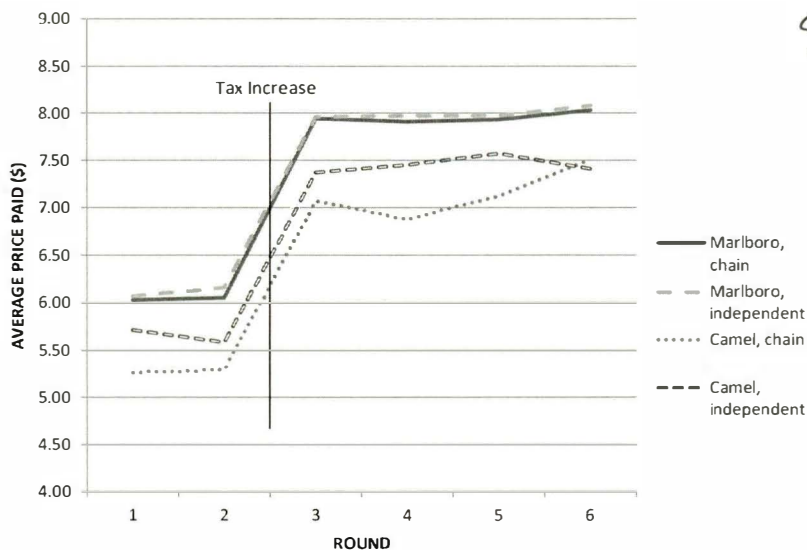
†p Value reflects Minnesota versus Comparison States.

Note: Difference on product price changes before and after tax increases (Minnesota-comparison states): Marlboro Gold cigarettes: US\$1.89 (95% CI US\$1.82, US\$1.97); Camel Blue cigarettes: US\$1.81 (95% CI US\$1.66, US\$1.97); Copenhagen Wintergreen smokeless: US\$0.90 (95% CI US\$0.74, US\$1.06); Grizzly Wintergreen smokeless: US\$0.94 (95% CI US\$0.79, US\$1.08); $p < 0.0001$.

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Figure 2 Average cigarette prices paid by round, by store type, in Minnesota.



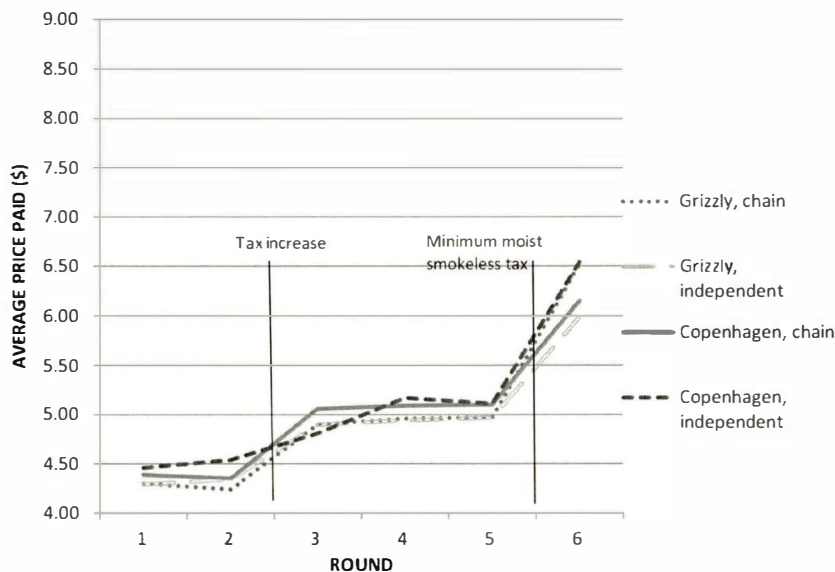
clearly marked on the package (figure 1) or an amount off which was reflected on the receipt. In Minnesota, of those tobacco products studied, Camel Blue cigarettes had the highest prevalence of offering price promotions, ranging between 27.1% of stores at Round 1; 43.8% of stores at Round 4; and 20.5% of stores at Round 6 of Minnesota stores offering a price promotion for this product. On average, the Camel Blue price promotions also offered the most value off. In all rounds, the average Camel Blue price promotion among those stores that offered one was at least US\$0.75 off. After adjusting for the amount of price promotion offered, the difference in average price of Camel Blue cigarettes by store type diminished and became non-significant at Round 2 and 5.

In Round 6, after the implementation of the minimum moist smokeless tobacco tax, a significantly higher proportion of Minnesota stores offered price promotion for Copenhagen Wintergreen smokeless (26.2% of stores in Round 6 vs 0–2.3%

of stores in Rounds 1 through 5; round effect $p < 0.0001$). In Round 6, when Copenhagen price promotions were most frequently observed, the average amount off was US\$0.63. Price promotions for Grizzly Wintergreen smokeless were uncommon (0–8.5% of stores over six rounds for Grizzly Wintergreen smokeless), and the only type of price promotion observed for Grizzly was US\$0.50 off. Marlboro Gold cigarette price promotions were very uncommon. Only one Marlboro Gold price promotion was observed in Minnesota during the study and it was for US\$0.15 off.

Socioeconomic characteristics at the census tract level were associated with the cigarette and smokeless tobacco prices paid (table 3). Marlboro Gold cigarettes cost more in census tracts with higher proportion of white (US\$0.04 per every 10% increase in proportion white, $p = 0.030$) and cost less in census tracts with higher proportion of population living under poverty (–US\$0.06 per every 10% increase in proportion of

Figure 3 Average smokeless tobacco prices paid by round, by store type, in Minnesota.



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Table 2 Price promotions offered, by tobacco product, by round for Minnesota stores

	Round 1	Round 2	Round 3	Round 4	Round 5	Round 6	χ^2	p Value
Camel Blue cigarettes	N=48 n (%)	N=48 n (%)	N=48 n (%)	N=48 n (%)	N=47 n (%)	N=44 n (%)		
Stores offering price promotions	13 (27.1)	17 (35.4)	14 (29.2)	21 (43.8)	19 (40.4)	9 (20.5)	8.03	0.15
Marlboro Gold cigarettes	N=48 n (%)	N=48 n (%)	N=48 n (%)	N=48 n (%)	N=47 n (%)	N=45 n (%)		
Stores offering price promotions	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	1 (2.22)	NA	NA
Grizzly Wintergreen smokeless	N=46 n (%)	N=47 n (%)	N=46 n (%)	N=47 n (%)	N=47 n (%)	N=45 n (%)		
Stores offering price promotions	0 (0)	4 (8.5)	2 (4.4)	3 (6.4)	1 (2.2)	0 (0)	8.04	0.15
Copenhagen Wintergreen smokeless	N=44 n (%)	N=44 n (%)	N=43 n (%)	N=45 n (%)	N=44 n (%)	N=42 n (%)		
Stores offering price promotions	1 (2.3)	1 (2.3)	1 (2.3)	0 (0)	0 (0)	11 (26.2)	43.53	<0.0001

population living under poverty, $p=0.015$). Grizzly and Copenhagen smokeless tobacco both cost more in census tracts with higher median home values (US\$0.01 per US\$10 000 median home value for both brands, $p<0.05$). Grizzly also cost more in census tracts with higher proportion of young adults (aged 18–24, US\$0.05 per 10% increase in proportion of young adults, $p=0.028$).

DISCUSSION

In July 2013, a sizeable increase in Minnesota taxes on tobacco products created an opportunity to evaluate how the tobacco industry modifies product prices in response to a tax increase. The findings from this study indicate that an increase in the tobacco tax resulted in an increase in the actual tobacco prices paid by consumers, which supports the known public health benefit of tobacco tax increases.^{17–22} Specifically, this analysis of a tobacco tax increase on tobacco prices suggests that, in Minnesota, the cigarette industry over-shifted the tobacco tax to consumers. In other words, the cigarette industry used the tax increase as an opportunity to increase retail prices (and, presumably, profit). Of the two cigarette products studied, Marlboro Gold cigarettes were observed to have the biggest over-shift (of US\$0.14) after the tax was implemented. However, Camel Blue cigarettes were also observed to have an over-shift (of US\$0.06). Based on how smokeless tobacco products are taxed, it was impossible to determine if, or by how much, the tax was over-shifted or under-shifted for these products.

However, this study does present evidence that setting a minimum tax on moist smokeless tobacco products equivalent to the per pack tax on cigarettes along with a high ad valorem tax rate (95%) is an effective way to increase the price of these products. The observed smokeless tobacco prices increased significantly after implementation of the 1 July 2013 increased ad valorem tax on non-cigarette tobacco products and again after implementation of the minimum tax on 1 January 2014.

Our findings support previous findings^{5–8} but this is the first study to involve tobacco purchases. Prior studies in this area relied on the analysis of tobacco industry documents,⁸ Nielsen Homescan data,¹⁰ self-reported price data from tobacco users,¹¹ surveys of tobacco retailers,⁷ local tax collection data⁶ or economic modelling and simulation.^{5–12}

The evidence of tax over-shifting by the cigarette industry is inconsistent with many of the arguments made by the tobacco industry as it works against tobacco tax increases through aggressive lobbying. The industry commonly argues that tobacco tax increases are regressive, result in smuggling, and are unfair to tobacco users.²³ However, evidence pointing to over-shifting suggests that the tobacco industry is not genuinely concerned about these speculated outcomes of tobacco tax increases.

In Minnesota in each round of the study, a wide variation of prices paid was observed for all four of the studied tobacco products; such variations were associated with store types (chain vs independent), presence of price promotions and neighbourhood socioeconomic characteristics. Although Camel Blue cigarettes

Table 3 Bivariate analysis on predictors of cigarette and smokeless prices (p values)

Variables	Brand						
	Marlboro		Camel	Grizzly	Copenhagen		
Census tract variables	Bivariate p value	Regression coefficient*	Bivariate p value	Bivariate p value	Regression coefficient*	Bivariate p value	Regression coefficient*
Median home value (in '000)	0.684		0.746	0.010	0.001	0.043	0.001
Median household income	0.111		0.792	0.270		0.371	
Proportion ages 18–24 (%)	0.350		0.647	0.028	0.005	0.934	
Proportion minors	0.760		0.910	0.395		0.343	
Proportion black	0.104		0.652	0.754		0.146	
Proportion white (%)	0.030	0.004	0.888	0.879		0.433	
Proportion under poverty (%)	0.015	–0.006	0.478	0.300		0.778	

*Coefficients represent change in tobacco product prices (in US\$) per each increment of Census tract variable.

appeared to have the largest over-shift, Camel Blue price promotions were the most common type of price promotion observed. However, price increases in Camel Blue cigarettes still revealed over-shifting after accounting for the amount of discount offered by these price promotions. This suggests that price promotions serve as a tobacco company public relations manoeuvre more than a true mechanism for price savings, supported by our previous findings that smokers who received these price promotions are more likely to think positively about the cigarette companies.²⁴

Prices for Camel Blue cigarettes differed across chain versus independent store, and adjusting for price promotions reduced the price differences by store type, suggesting that the offering of price promotions, in part, explains these differences. Minnesota has a minimum cigarette price law that aims at levelling the playing field for tobacco retailers. However, the calculation of minimum cigarette prices under this law does not include price promotions, and therefore fails to level the playing field for retailers who do and do not offer price promotions since retailers who offer price promotions can sell cigarettes lower than the state minimum prices. Prohibiting price promotions in minimum cigarette price laws may level the playing field for all retailers and also uphold the cigarette tax increases.

This study has limitations: First, the cigarette products studied are both considered premium brands. Economy or generic cigarette brands were not studied. As a result, testing whether tax shifting varied by brand could not be accomplished. However, the selected brands represent the cigarette brands with the largest market shares in the Nielsen Convenience Track market data for the Minneapolis region, which covers a large portion of the geographic area studied. Second, the sample of convenience stores was not randomly selected. Rather, it was a sample that was strategically selected for geographic diversity and other factors. Third, the store sample is composed entirely of convenience stores and may not generalise to other types of tobacco retailers (ie, pharmacies, supermarkets, etc). Based on the way that tax is levied on non-cigarette tobacco products (a per cent of wholesale price), it is difficult to determine if prices increased by more than the tax increase. Specifically, because the wholesale prices of the studied products is unknown, we cannot compute exactly how much tax was paid before and after the tax increase. Finally, the study design did not allow us to gather information about any wholesale tobacco discounting that might have played a role in the price variations observed. Despite these limitations, we believe that this study presents useful information about the tobacco industry response to a sizeable tobacco tax increase and how this impacts the real world tobacco prices paid by consumers after the increase takes effect. Given that tobacco tax increases are one of the most effective tobacco control policies available,^{16 17} understanding how these policies are manipulated by the tobacco industry is crucial to making sure that the policies are implemented effectively.

Further research is needed to understand how, or if, the tobacco industry uses wholesale price promotions and direct mail coupons in response to tobacco tax increases. We know that the tobacco industry uses price promotions extensively^{1 2} and that direct mail coupons can deliver significant savings to consumers.²⁵ However, more information is needed about how, or if, they use these types of price promotions to specifically blunt the public health impact of tobacco tax increases.

What this paper adds

- ▶ The tobacco industry spends the bulk of its marketing dollars on promotions designed to reduce the price of tobacco products to consumers. Despite this, there is evidence to suggest that the tobacco industry intentionally increases prices on top of a tobacco tax increase and, in doing so, is able to make additional profits while blaming the entirety of the increase on 'the government'.
- ▶ This study found that tobacco tax increases resulted in higher tobacco prices at the retail level, and that the average observed cigarette prices increased by more than the tax increase. This evidence of tax over-shifting by the cigarette industry is inconsistent with many of the arguments made by tobacco industry as it works against tobacco tax increases through aggressive lobbying.

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Contributors BB developed the study design, oversaw data collection and led the development and writing of the manuscript. KC provided input on study design, conducted data analysis and was involved in drafting and critically reviewing the manuscript. BAS provided input on study design and critically reviewed the manuscript. MM assisted with study design and data collection, and critically reviewed the manuscript. RGB provided input on study design and manuscript development. All authors have reviewed and approved the final version of the submitted manuscript. BB is responsible for the overall content.

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Competing interests None.

Provenance and peer review Not commissioned; externally peer reviewed.

Data sharing statement There is additional unpublished data around (1) advertised tobacco prices at the point-of-sale and (2) availability of electronic cigarettes. These data are housed at the Association for Nonsmokers-Minnesota and are available to the authors for additional analysis.

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Tobacco product prices before and after a statewide tobacco tax increase

Betsy Brock, Kelvin Choi, Raymond G Boyle, Molly Moilanen and Barbara A Schillo

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ND Petroleum Marketers Association
ND Retail Association



Testimony- SB 2322

February 4, 2015- Senate Finance and Tax Committee

Chairman Cook and Members of the Senate Finance and Tax Committee:

For the record, I'm Mike Rud, President of the North Dakota Petroleum Marketers Association. On behalf of NDPMA and its 400 members I stand before you urging a **"DO NOT PASS" recommendation on SB 2322.**

North Dakota is the last state that needs to see a business tax increase of any kind. I would agree with several NDPMA members who are here today, who commented to me on how unlikely it was any candidate in last fall's election season brought up raising taxes on the campaign trail. So it doesn't make much sense that we are suddenly have this debate one more time. The State's economy remains very strong with the retail sales like those being generated by the over 700 convenience stores in the state playing a key role. As I've said before with the retail sector of the state's economy hitting on all cylinders why would any legislator support throwing a wrench into the economic engine? Also, why would this legislative body support such an onerous "user" tax on a legal product?

Proponents of raising the state's tobacco taxes would have us believe that low taxes are encouraging more tobacco use. But that contention isn't supported by the data.

North Dakota's smoking rates are very low despite the state also having some of the lowest tobacco taxes in the nation. The state ranks just 37th out of 50 states for adult smoking, and 49th for the use of smokeless tobacco.

In terms of youth cigarette use, North Dakota ranked just 34th among the 44 states that reported data. For use of all forms of tobacco by youths (cigarettes, chew, etc.), North Dakota ranked 30th among 36 states reporting data.

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During budget testimony in early January, Breathe ND officials said its agency will have an estimated **53 Million Dollars in its coffers at the end of the 2017 biennium!** That would seem to be more than enough cash to keep the anti-tobacco campaign in high gear.

This proposed tax could leave the adult purchaser of a single pack of cigarettes facing a tax increase of roughly 300%. The buyer of a single can of snuff could see a tax increase of nearly 350%.

Cigarettes are already subject to federal and state excise taxes, state sales taxes, and other fees. If North Dakota increased the cigarette excise tax by \$1.10, taxes and fees would account for 57.5% of the cigarette pack price. This far exceeds the government burden imposed on other products that are considered highly taxed. For example the taxes and fees on cell phone and beer account for about 17% of the total product price, while taxes and fees on a gallon of gas equate to about 13%.

According to the National Association of Convenience Stores, cigarettes are the top revenue generator, accounting for 31.8% of in-store sales nationwide. Increasing the excise tax could hurt legitimate retailers when adult smokers shift purchases across state lines or to other outlets, such as the internet or Native American territories. This would negatively affect North Dakota's 1,260 retailers. Well over half of these outlets are owned by NDPMA members, Independent businesses providing legal products and services to ND consumers.

Cigarette excise taxes are regressive because they most negatively affect lower-income adult smokers. Based on data from the Centers for Disease Control and Prevention, 32.0% of adults in North Dakota who earn less than \$15,000 are smokers, whereas only 15.5% of adults who earn \$50,000 or more are not smokers. Raising taxes will unfairly further burden low-income earners.

An excise tax increase could provide incentives for smuggling and other contraband activities, resulting in lost tax revenues. In 2014, the Bureau of Alcohol, Tobacco, Firearms, and Explosives said "\$7 billion to \$10 billion in state and federal tax revenue is lost each year because of [cigarette] smuggling, up from \$5 billion a few years ago..." And let's not forget only of the North Dakota's Native American reservations currently collects and remits sales tax

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2-4-15

back to the state on tobacco products. How is the state going to police what is sure to be an uptick in illegal purchases of tobacco products brought into communities off the nearby reservation and sold with no taxes charged? State and Local law enforcement are already strapped enough with the surge of traffic into the state without having to deal with policing what is normally a legal sale of a legal product, but now suddenly becomes a black market and tax evasion issue.

Contrary to what some might believe, North Dakota retailers don't stand in the driveway or on the storeroom floor attempting to sell tobacco products. Like the food, pop and candy we sell tobacco is a legal product. We simply attempt to meet consumer demand. In a very competitive environment we do the best we can to keep products competitively priced. Don't tie our hands.

SB 2322 is a solution in search of a problem. We urge a "DO NOT PASS" recommendation.

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SB 2323
2-4-15

Testimony from Paul Mutch

HB 1421 – House committee on Finance and Taxation

February 3, 2015

Mr. Chairman and members of the committee:

My name is Paul Mutch. I live in Larimore where I own and operate Mutch Oil Company, which includes a small convenience store in our community of 1300 people. We have been selling tobacco products for many, many years.

I am opposed to HB 1421 and I do not use tobacco products.

In a time when all we hear about on the national level is how we need to look out for the middle class, middle class tax cuts, and the shrinking middle class, etc., I find it unbelievable how a state like North Dakota – in the financial condition that it is currently in – would even consider the idea of increasing taxes on anything. A tax increase on tobacco products – no matter how much a person hates their usage – would clearly hit the middle class the hardest.

A tax increase, to whatever degree, is not going to be enough to convince my customers whom I spoke with to quit smoking. The lady on social security who comes in and buys two cartons per week – as she carries an oxygen tank – is not going to quit smoking because they now cost more. My bookkeeper, who has been smoking for 40+ years, told me as we visited, that a tax increase of any amount would not deter her from smoking. These are both sad, but true commentaries. Government imposed “sin taxes” meant to change individual behavior seldom have the desired effect.

I urge a NO vote on HB 1421 because even though I would like to see everyone either quit smoking or never start, I don't believe raising taxes would result in any fewer smokers – just more North Dakota residents with less money in their pockets for the things they really need.

Thank you for your consideration.

Paul Mutch

Mutch Oil Company – Larimore, ND

701.739.3835

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SB 2223
2-4-15

January 30, 2015

Written Testimony by Matt Bjornson

Senate Finance and Tax Committee

SB 2322

Mr. Chairmen and Members of the Committee,

I am in strong opposition to SB 2322. As a small family business owner and North Dakota Citizen it is beyond belief that any legislator could propose a tax increase of any kind upon citizens of our state at this time. I doubt any North Dakota legislative candidate promoted tax increases in their last race. Yet, some legislators have signed on with an already well-funded state bureaucracy promoting a tax increase on a legal product bought by adult consumers. Whether or not you personally like tobacco is not the issue at hand. The real issue is whether taxes should be used as a punishment. In addition to the existing state tax, a large percentage of the current price paid by consumers for legal tobacco products includes the cost of the master settlement tobacco companies' pay. The day the master settlement went into effect, wholesale tobacco prices rose dollar for dollar. Tobacco consumers are already paying more than enough to continue funding the payroll of the anti-tobacco bureaucracy as well as their bloated advertising budget.

Some citizens may say that raising the tax is a good idea. There is nothing easier than saying your neighbor should have to pay a tax that you don't. If our state government is going down the road of taxes for the sake of punishment or behavior change then you should be looking at taxing fast food, large soda drinks, foods high in cholesterol, the list goes on. Or we could just throw what is supposed be a guiding tenant of our government aside, individual freedom, and pass a prohibition on all things deemed "not good for you" by our government.

SB 2322 deals with a legal product bought by adult consumers. Obviously, it's clear our state cannot justify new taxes on the basis of need. Regardless of a legislator's political affiliation, if they support regressive taxes as an acceptable form of punishment of citizens, I'd say they are in the wrong building.

Sincerely,

Matt Bjornson

BJORNSON OIL COMPANY INC.

PO BOX 250

CAVALIER, ND 58220

#14



O.K. Distributing Co., Inc.

P.O. Box 1252
522 14th Avenue West
Williston, ND 58802-1252
Phone: 701-572-9161
Fax: 701-572-9631
Email: kellyk@okdist.com

Wednesday February 4th, 2015

Senate Finance and Taxation Committee SB 2322

Mr. Chairman and members of the committee, my name is Kelly Kaiser and I am from Williston and the owner of O.K. Distributing. We are a cigarette and tobacco wholesaler that has served Northwest North Dakota for 60 years. I employ 30 people in Williston and am the 3rd generation owner of this company.

I am not in favor of this bill. Because of the following:

- This bill would increase the cost of doing business for our company. With higher cost of cigarettes and tobacco, the insurance premiums for cargo and business insurance will increase. Accounts receivable will go up for us by as much as \$75,000 while sales will go down.
- There are many people from Montana that come over to buy their cigarettes that also buy other goods and services. With this increase, that trend will be reversed because the tax on tobacco will be less and the retail businesses that we supply will lose sales not only on tobacco but also snacks, candy and beverages that we supply to them.
- This is a huge tax increase. I believe the only business tax increase introduced this session. Small business owners do not need a tax increase like this. It will impact their overall business substantially.
- This bill would increase the number of Native American smoke shops and tobacco outlets on Reservations and Indian trust lands and thousands of people will try to avoid the tax completely. Those operators on Reservation and Indian trust lands will be able to increase their profit dramatically while the State will increase revenue minimally.
- This bill would also start opening the door for individuals to transport tobacco from other locations outside the State to private individuals and businesses.
- This is a regressive tax will affect the low income people the most.

Taxing tobacco may seem to be an "easy" way to increase revenue but increasing the tax this dramatically at one time will change the landscape of tobacco purchasing perhaps not for the better. The results may surprise all of us.

North Dakota still has a great economy and increasing taxes on a specific group of citizens and business owners is not the right thing to do.

I would urge a "do not pass" on this bill.

Thank you very much for your time.



#15
2.4.15
SB 2322

February 3, 2015

North Dakota Legislative Assembly
The Honorable Dwight Cook
1408 17th Street SE
Mandan, ND 58554-4895

Dear Representative Cook:

On behalf of AMCON Distributing Company ("AMCON") and its 840 employees throughout the Midwest and North Dakota, I would like to express our opposition to any proposal to increase excise taxes on tobacco products. Any such action would have a devastating impact on businesses, small and large, and would place an unfair tax burden on a small segment of society who can least afford these increases.

As one of the leading wholesale distributors in the Midwest, AMCON distributes consumer products, including cigarettes and tobacco products, candy and other confectionery, beverages, food service, groceries, paper products, automotive and health and beauty care products to more than 4,500 retailers throughout the Midwest, including North Dakota. We currently employ approximately 840 people, including 60 employees who live and work in North Dakota. In addition, the Company operates sixteen retail health food stores in Florida and the Midwest.

Throughout our 35 year history, we have seen firsthand the damaging effects of tobacco tax increases on our business and the businesses of the retailers with which we interact on a daily basis.

These proposed increases are bad for North Dakota, bad for its people, and bad for business. Specifically, these proposed tax increases make no sense because:

- Cigarette taxes are selective and regressive;
- Increasing taxes on a small group of citizens to benefit the overall population is not fair;
- Higher tobacco taxes DO NOT significantly reduce consumption, but drive consumers to avoid/evade taxes;
- Higher cigarette taxes jeopardize significant cross-border cigarette purchases and tax revenues from residents in surrounding states;
- Increasing the cigarette tax never raises the amount of revenue expected;

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SP, 2322
2-4-15

- It is bad public policy to raise taxes during the current slow and fragile economic recovery; and
- An increase in the rate applied to smokeless tobacco products creates an artificial barrier to consumers switching from the most risky form of tobacco, cigarettes, to a less risky form of tobacco like moist snuff.

We urge you to reject any attempt to raise tobacco taxes for all of the reasons mentioned above. North Dakota business owners and their employees are the ones who will suffer as a result of these proposals.

Thank you for your time and attention.

Respectfully,



Kathleen Evans
President

#16.
SB2322
2-4-15

Today, I visited your state for my monthly shopping trip. Just for the record, and to put this letter into perspective, the total amount that I spend in your state is \$600.00 - \$800.00.

Why do I travel over 2 1/2 hours to another state to do my monthly shopping? Because, you see, I am a smoker from Minnesota and the money that I save on purchasing my cigarettes pays for the rest of my monthly shopping.

Yes, I said that I am one of those horrible, icky, SMOKERS!

But, I am also a taxpayer!

I am a law abiding, hard-working, \$12.00/ hr, not on any assistance, tax payer.

I became a smoker during my enlistment in the US Army. No, neither of my parents smoked. No, I did not start smoking as until I reached the age of 18.

I choose to smoke. As an adult, it is my choice. One of the many freedoms that I served to protect.

I understand that the legislators in North Dakota would like to increase the excise tax on cigarettes, to be more in line with Minnesota. Let me tell you what happened in Minnesota after our legislature decided that smokers like me should pay for the new stadium. I, like many of my friends, stopped paying ANY tax on cigarettes in Minnesota because we started driving to North Dakota to buy them, benefitting your state with our tax dollars. In the beginning, we would car pool, buy our cigarettes, and fly back home. Over time, we have discovered many of your other businesses and now make monthly trips on our own to take advantage of them.

Today, for instance, I visited not only the smoke shop, but also K-mart, 8 different re-sale and antique shops, a paint store, gas station, sports shop and Buffalo Wild Wings. Purchasing all my monthly supplies for my home, as well as shoes, ice skates, a jacket, jewelry, a pillow and bedding among other things. And spending the entire day there.

This is a day which in the past, my family and I would have made to St. Cloud, MN. However, after St. Cloud added a local tax years ago, and then with the increase in cigarettes, it has become cost effective for me to make my monthly trip to Fargo instead.

I am not writing to threaten you, only to let you know that if you decide to increase the excise tax on cigarettes to close to the price in Minnesota, you will lose my business. You do understand that I am not going to drive to your state to pay the same price that I can pay at my local gas station where I already stop.

I understand that part of the reason for the purposed is to discourage underage smokers and to encourage smokers like me to quit. Well, the cold hard truth is....neither is going to happen. Did it help here in Minnesota? No, sorry, it did not. Some advocates may have stated that sales have gone down. Sure they have, I know personally 27

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2-4-15

smokers who now buy in your fine state and another 13 who have started rolling their own. So, just because Minnesota is not getting that tax revenue does NOT mean we have quit. It means we are smart, resourceful tax payers, who will find a way.

Please keep this in mind as you contemplate this additional tax. Because, as much as I enjoy and look forward to my monthly shopping trips, if they are not financially beneficial to me, I will move on. South Dakota, Iowa or Wisconsin will receive my business if you don't want it. This equates to lost revenue for North Dakota.

Feel free to contact me if you have questions. Mary Kuhnau (320) 533-0475

Testimony of Jon Godfread
Greater North Dakota Chamber of Commerce
SB 2322
February 4, 2015

Mr. Chairman and members of the committee, my name is Jon Godfread, I am the Vice President of Government Relations for the Greater North Dakota Chamber, the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in in Opposition to SB 2322.

GNDC has a long history of opposing excise taxes, which we believe are onerous and unfair. Raising the taxes on a legal product upwards of 250% - 350% would shock the conscience of any consumer. Our focus in this session is on tax decreases, not increases.

If we are trying to do social engineering, that is to discourage the practice, the tax code is a poor place to do it. If the goal is to eliminate smoking introduce a bill prohibiting the sale or use of tobacco products in the state. As witnessed by our experience with Minnesota increasing their cigarette tax with a "health fee", all we do is drive sales to a lower priced location by passing this bill. Thus, hurting our local retailers and hurting the consumers of a legal product. We see no acceptable reason to increase this tax.

Thank you for the opportunity to appear before you today in opposition to SB 2322. I would be happy to answer any questions.

#1
2.16.15
SB 2322

Chairman Holmberg and members of the Senate Appropriations Committee,

My name is Tim Mathern. I introduced SB2322 to save lives and reduce health care costs.

My research says to accomplish this I need to come to your committee for help. The research concludes without question that the cost of tobacco drives use. Implementation of this bill will do the following.

- 1) Prevent an estimated 7,500 youth from taking up smoking for the rest of their lives. *
- 2) Motivate an estimated 8,000 current adult smokers to stop using cigarettes for good.*
- 3) Save an estimated \$1 billion in health care costs over the next 10 years.*
- 4) Increases the excise tax on cigarettes from 44 cents to \$2/pack.
- 5) Increases the excise tax on other tobacco products from 28% to 50% of wholesale purchase price.
- 6) Increases the excise tax on snuff from 60 cents per ounce to \$2.72 per ounce.
- 7) Increases the excise tax on chewing tobacco from 16 cents per ounce to 73 cents per ounce.
- 8) Allows the new tobacco tax revenue to be deposited in the state general fund, but legislators decide to use the new revenue for specific purposes.
- 9) "Holds harmless" the state general fund, where all current tobacco tax revenues are deposited. In 2015-17 about \$50 million per biennium from tobacco tax revenues will continue to be deposited into the state general fund. This is the amount of revenue expected to be generated by 44 cents/pack on cigarettes, 28% of wholesale purchase price on other tobacco products, and per ounce tax on snuff and chewing tobacco (60 cents and 16 cents, respectively). The amount of revenue generated by 3 of the 44 cents/pack on cigarettes will continue to be directed to cities as described in current law. In addition to that \$50 million, an estimated \$175 million generated by the tobacco taxes in SB 2322 will also be deposited into the state general fund.
- 10) Improves the definition of other tobacco products to include new and evolving tobacco and tobacco-derived products, while excluding FDA-approved cessation products that include nicotine.
- 11) Establishes a base for taxation of products not sold at the wholesale level.
- 12) Eliminates the tax exemptions for tobacco sold at the North Dakota veterans' home and state hospital.

Members of the Senate, let's work together to save lives and reduce health care costs, I ask you for a Do Pass recommendation on SB2322. Thank you.

* 1 & 2 – American Cancer Society Cancer Action Network and Campaign for Tobacco-Free Kids, 2015

* 3 – RTI International, 2015 (RTI International is the independent evaluator on contract with the ND Center for Tobacco Prevention and Control Policy to evaluate the comprehensive tobacco control program).

The logo for Tobacco Free North Dakota features a blue outline of a cloud on the left. To its right, the words "Tobacco Free" are written in a bold, black, sans-serif font, and "North Dakota" is written below it in a black, cursive script font.

Tobacco Free North Dakota

#2

2322

2-16-15

Testimony in Support of SB2232
From: TJ Jerke
Education & Advocacy - Tobacco Free North Dakota
To: Senate Appropriations Committee
Sen. Ray Holmberg, Chair
February 16, 2015

Chairman Holmberg and members of the Senate Appropriations Committee, my name is TJ Jerke. I stand here as the Education & Advocacy specialist for Tobacco Free North Dakota. Tobacco Free North Dakota is an expansive coalition of healthcare organizations throughout the state.

Tobacco Free North Dakota's mission is to improve and protect the public health of all North Dakotans, by reducing the serious health and economic consequences of tobacco use, the state's number one cause of preventable disease and death.

I stand here today in support of Senate Bill 2322.

As you know, Senate Bill 2322 is asking to raise the state's tobacco excise tax. This concept, without a doubt, is a win-win when it comes to decreasing youth and adult tobacco use, and reducing state spending on healthcare costs attributed to tobacco use.

As you may also know, North Dakota is spending \$326 million annually in health care costs directly caused by smoking. \$56.9 million is covered by North Dakota's state Medicaid program. Each North Dakota household is spending \$819 as a result of state and federal tax burdens from smoking-caused government expenditures. Add this to the over \$232 million lost in work productivity every year, and the issue becomes more severe.

Passing this bill will decrease youth smoking by 23%, keep at least 7,500 minors from starting, helping more than 8,000 current adult smokers to kick the habit and prevent at least 4,400 premature smoking-caused deaths.

When looking at all these statistics, by passing this bill, North Dakota and North Dakota residents will see a \$1.3 million savings with fewer lung cancer cases over the next five years. We will also see \$3.2 million saved with fewer smoking-affected pregnancies & births, as well as \$302 million saved in long-term health care costs from adult & youth smoking declines over the next five years.

To better illustrate this point, and show you that passing this bill will decrease state appropriations, I'd like to highlight our neighbors to the east.

In 2013, Minnesota raised their tobacco tax by \$1.60. Minnesota smokers reported that this price increase influenced their smoking behaviors, with 60.8 percent thinking about quitting, 48.1 percent cutting down on smoking and 44.2 percent making quit attempts. Among smokers who successfully quit in the past year, 62.8 percent reported that the price increase helped them make a quit attempt, and 62.7 percent reported that it helped keep them from smoking again.

While this hearing is to be focused on the funding and appropriations of this bill, I feel the committee should know about one provision in the bill that bears large implications to state tax code, thus state funding and appropriations. Senate Bill 2322 contains a provision defining e-cigarettes as an, "Other Tobacco Product." By defining e-cigarettes as an Other Tobacco Product, the new, emerging products would be taxed like tobacco products.

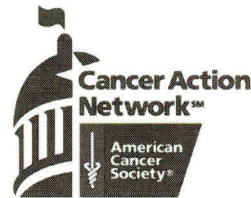
These products should be defined as a Tobacco Product because they simply are Tobacco Products.

They need to be classified as a Tobacco Product to ensure proper regulation, oversight and enforcement of these smoking devices. Many current smokers, and family members of smokers, continue to vocalize

their support of these new products, and their use as a form to help themselves, or their family members, quit smoking. Healthcare professionals would gladly acknowledge that e-cigarettes might someday be useful, but the healthcare industry is waiting for the companies that make them to produce some data to support their use, which they are voluntarily withholding. Recent studies have shown that e-cigarettes may have their own risks that are not well understood. Until safe data is provided, health care professionals will recommend products that are known to work- prescription medications, nicotine gum, lozenges, and patches. Many healthcare providers I work with would love to have more tools in their toolkit to help people quit using tobacco.

No tobacco product should be exempt from state laws simply because it's sold in a modern or trendy disguise. Addiction is what is really being sold with e-cigarettes. Like traditional cigarettes, e-cigarettes deliver nicotine in a cloud of other toxic chemicals, and their use should be restricted equally under state law in order to protect public health.

As I spoke to current, FDA-approved, cessation products, I just want to point out that under this bill, nicotine gum, lozenges, and patches are exempted, and will not be taxed. This bill, under section 1 of the engrossed version, exempts FDA-approved products. That means, if the FDA approves e-cigarettes as cessation products, they would fall under this provision and no longer be subject to state tax. In order for this to happen, it would require e-cigarette companies to show that their products actually work as a cessation product.



STATE CIGARETTE TAX INCREASES: EXPLANATIONS AND SOURCES FOR PROJECTIONS OF NEW REVENUES & BENEFITS

The economic model developed jointly by the Campaign for Tobacco-Free Kids (TFK) and the American Cancer Society Cancer Action Network (ACS CAN) projects the increase in state revenues, public health benefits, and health care cost savings resulting from increases in state cigarette tax rates. The projections are based on economic modeling by Frank Chaloupka, Ph.D., and John Tauras, Ph.D., at the Institute for Health Research and Policy at the University of Illinois at Chicago and are updated annually.

The projections indicate that cigarette tax increases boost state cigarette tax revenues and reduce smoking. When cigarette tax rates are increased by large amounts, the higher amount of tax collected per pack generates more new revenue than is lost from the decline in pack sales caused by a decline in consumption and increased smoker tax avoidance prompted by the price increase. The projections are based, in part, on research findings that a 10 percent cigarette price increase, if maintained against inflation, reduces youth smoking rates by 6.5 percent or more, adult smoking prevalence by 2 percent, and total consumption by 4 percent.^{1 2 3}

The projections are fiscally conservative, including generous adjustments for lost state pack sales and the corresponding loss of state revenue caused by tax avoidance and tax evasion. For the purposes of our modeling, tax avoidance refers to informal smuggling by individual smokers. This includes obtaining lower-taxed or untaxed cigarettes either legally or illegally across state lines, from internet retailers, from tribal vendors not subject to state taxes, or from other sources. Tax evasion refers to organized criminal smuggling activity.⁴ Despite such practices, cigarette tax increases still generate new revenue and reduce smoking rates, which, in turn, reduce smoking-caused disease, deaths, and related economic costs.

¹ Chaloupka, FJ, "Macro-Social Influences: The Effects of Prices and Tobacco Control Policies on the Demand for Tobacco Products," *Nicotine & Tobacco Research*, 1999, and other price studies at <http://tigger.uic.edu/~fjc>.

² Tauras, J, et al., "Effects of Price and Access Laws on Teenage Smoking Initiation: A National Longitudinal Analysis," Bridging the Gap Research, ImpacTeen, April 24, 2001, and other price studies at <http://www.impactteen.org>.

³ Chaloupka, FJ & Pacula, R, "The Impact of Price on Youth Tobacco Use," Chapter 12 in National Cancer Institute, Smoking and Tobacco Control Monograph 14, *Changing Adolescent Smoking Prevalence*, November 2001; International Agency for Research on Cancer (IARC), *Effectiveness of Tax and Price Policies for Tobacco Control*, IARC Handbooks of Cancer Prevention in Tobacco Control, Volume 14, 2011.

⁴ Farrelly, M, et al., "Cigarette Smuggling Revisited," U.S. Centers for Disease Control & Prevention (CDC), in press, and Farrelly, M, et al., *State Cigarette Excise Taxes: Implications for Revenue and Tax Evasion*, RTI International, 2003, http://www.rti.org/pubs/8742_Excise_Taxes_FR_5-03.pdf.

Economic studies indicate that cigarettes and other tobacco products can be substitutes for one another, meaning if cigarette taxes (or prices) are increased while other tobacco product taxes (or prices) remain unchanged, some of the reductions in cigarette smoking could be offset by increases in the use of other tobacco products.⁵ In the majority of states where other tobacco products are taxed at a lower rate than cigarettes, equalizing the tax rates on other tobacco products with cigarettes, and across product categories, would reduce this potential substitution. Tax equalization would also reduce the use of other tobacco products, while at the same time generate additional revenue.

These projections incorporate the impact of annual background declines of 2 percent for adult and future youth smoking prevalence and 2.5 percent for pack sales, as well as changes in pack prices. The background decline is the annual reduction in cigarette use that would be expected to occur without any changes in the tax rate due to other tobacco control policies, changing social norms, and a changing tobacco product landscape. It is calculated based on trends in recent years and current activity. Smoking and pack sale declines in any particular state will vary depending on its existing smoking rates, pack prices, other tobacco prevention, cessation, and industry activities, and changes in population. Projections are not adjusted for projected changes in state population or population demographics. However, projections are conservative in controlling for other factors and to be even more careful, the projected amounts have also been rounded down.

Despite all of these generous adjustments to avoid over-estimates, the projections still show that large state cigarette tax increases will both significantly reduce smoking levels and substantially increase state revenues. The increased tax per pack will still bring in more new state revenue than is lost from the decrease in the number of packs sold caused by consumption declines, tax avoidance, and smuggling resulting from the tax increase. In those states that apply their sales tax percentage to the total retail price of a pack of cigarettes (including the state cigarette tax amount), a cigarette tax increase will raise state sales tax revenues per pack, which will offset sales tax revenue losses from fewer packs being sold. In addition, smokers who quit or cut back will likely spend the money they previously spent on cigarettes largely on other goods on which state taxes may be collected, which could further increase state revenues.⁶

These projections assume that the tax increase is fully passed on to the consumer in higher prices, and keeps up with inflation over time, which is consistent with economic research on the usual impact of cigarette taxes on cigarette prices.^{7 8 9} However, because of industry or retailer pricing strategies or

⁵ Chaloupka, FJ & Warner, KE, "The Economics of Smoking," in Culyer, AJ & Newhouse, JP, eds., *Handbook of Health Economics*, Amsterdam: North-Holland, 2000.

⁶ Campaign for Tobacco-Free Kids, Counter Tobacco, & American Heart Association, *Deadly Alliance: How Tobacco Companies and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies*, March 5, 2012, http://www.tobaccofreekids.org/what_we_do/industry_watch/store_report/.

⁷ U.S. Department of Health and Human Services (HHS), *Reducing Tobacco Use: A Report of the Surgeon General*, Atlanta: HHS, CDC, National Center for Chronic Disease Prevention & Health Promotion, Office on Smoking and Health, 2000.

⁸ Chaloupka, et al., 2000.

⁹ HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, Atlanta: HHS, CDC, National Center for Chronic Disease Prevention & Health Promotion, Office on Smoking and Health, 2012.

changes in consumer purchasing behavior, some customers may not experience a price increase of the full amount of the tax increase.¹⁰ If a tax increase is not fully passed on in the form of higher prices, then the reductions in smoking and its consequences in response to the tax increase will be smaller, while the revenues generated from the tax increase will be larger. Alternatively, if cigarette companies use the tax increase as an opportunity to raise net-of-tax prices and the tax increase is more than passed on, then the reductions in smoking and its consequences will be larger, while the increase in revenues will be smaller.

The starting price per pack (before the proposed cigarette tax increase) used in these projections includes all federal and state excise and sales taxes and, where applicable, local taxes (i.e., New York City's \$1.50 per pack tax is factored into the overall New York State price per pack). The prices are based on data from *The Tax Burden on Tobacco, 2013*;¹¹ reports of state and local cigarette tax increases; media reports on tobacco company price changes; the USDA Economic Research Service; the U.S. Bureau of Labor Statistics (for inflation adjustments); the U.S. Federal Trade Commission's *Cigarette Report for 2011*,¹² the most recent available, to adjust prices for retailer-based discounts, promotions, and coupons; and local tobacco pricing laws (i.e., New York City and Providence's prohibition on coupon redemption and product discounts).

The projections assume that the state will follow standard practice and apply the cigarette tax increase to all previously tax-stamped or otherwise tax-paid cigarettes held in inventory by wholesalers or retailers on the effective date of the increase. Failing to tax such cigarettes held in inventory would open the door to massive pre-increase stockpiling by retailers and wholesalers to evade the increase, delaying and reducing the amount of new state revenues.

The projected adult and youth smoking and smoking-harmed birth declines, and related mortality reductions are calculated by applying the above findings regarding the effects of tax and price increases to the number of current adult smokers in each state and to estimates of the number of youth (under 18 years old) alive today in each state who will become adult smokers and the number projected to die from smoking.^{13 14 15 16}

¹⁰ Harding, M, Leibtag, E, & Lovenheim, M, *The Heterogeneous Geographic and Socioeconomic Incidence of Cigarette Taxes: Evidence from Nielsen Homescan Data*, May 2010, http://www.bus.umich.edu/ConferenceFiles/MTAXI/Lovenheim_Rev.pdf.

¹¹ Orzechowski and Walker, *The Tax Burden on Tobacco, 2013*, 47, Arlington, VA: Orzechowski and Walker, 2014.

¹² Federal Trade Commission, *Federal Trade Commission Cigarette Report for 2011*, May 2013. Available at <http://www.ftc.gov/reports/federal-trade-commission-cigarette-report-2011>.

¹³ CDC, "Smoking During Pregnancy—United States, 1990-2002," *Morbidity and Mortality Weekly Report (MMWR)* 53(39):911-915, October 8, 2004, <http://www.cdc.gov/mmwr/PDF/wk/mm5339.pdf>.

¹⁴ CDC, "Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Economic Costs—United States 1995-1999," *MMWR* 51(14):300-03, April 11, 2002, www.cdc.gov/mmwr/preview/mmwrhtml/mm5114a2.htm.

¹⁵ CDC, "Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Economic Costs—United States 2000-2004," *MMWR* 57(45):1226-1228, November 14, 2008, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm>.

¹⁶ CDC, "Projected Smoking-Related Deaths Among Youth—United States," *MMWR* 45(44):971-974, November 11, 1996, <http://www.cdc.gov/mmwr/preview/mmwrhtml/00044348.htm>, for data on relative death risks of smokers, nonsmokers, and former smokers.

The projected five-year savings from fewer smoking-caused heart attacks and strokes, fewer smoking-affected pregnancies and related birth complications, and fewer lung cancer cases show just some of the many substantial savings from the smoking reductions prompted by a tax increase that begin to accrue immediately. The projected five-year lung cancer cost savings as a result of adult smokers quitting due to the tax increase takes into account the relative risk of developing lung cancer among quitters and the number of lung cancer deaths attributable to smoking.^{17 18} These savings will increase steadily in subsequent years. The projected five-year smoking-affected pregnancy and birth savings accrue from declines in smoking among pregnant women and corresponding reductions in smoking-caused birth complications and related health care costs for the children in their first year or life.¹⁹ The five-year heart attack and stroke savings projections show the estimated reductions in smoking-caused health care expenditures from reduced smoking-caused heart attacks within the first five years after the tax increase.^{20 21}

Because of research and data limitations, it is not yet possible to estimate total health care cost savings in each year following a cigarette tax increase, or even to provide reasonable estimates of the total health care savings over the first five or ten years. Since many smoking-related diseases take years to develop, smoking-caused health care cost savings from a cigarette tax increase will be relatively small in the first few years after an increase; however, they grow quickly. The projected long-term total health care cost savings from reducing the number of future youth and current adult smokers accrue over the lifetimes of youth (under 18 years old) alive in the state today who quit or don't start because of the tax increase and over the lifetimes of current adult smokers who quit because of the tax increase. Smokers' lifetime health care costs average at least \$25,000 (in 2015 dollars), despite shorter life spans. However, the savings per adult quitter are less than that amount (at least \$11,500 in 2015 dollars) because adult smokers have already been significantly harmed by their smoking and have already incurred or locked-in extra future smoking-caused health costs.^{22 23 24 25}

¹⁷ Chang, S, et al., "Estimating the cost of cancer: results on the basis of claims data analyses for cancer patients diagnosed with seven types of cancer during 1999 to 2000," *Journal of Clinical Oncology* 22(17):3524-30, September 2004.

¹⁸ Khuder, SA & Mutgi, AB, "Effect of smoking cessation on major histologic types of lung cancer," *Chest* 120(5):1577-83, November 2001.

¹⁹ Miller, D, et al., "Birth and First-Year Costs for Mothers and Infants Attributable to Maternal Smoking," *Nicotine & Tobacco Research* 3:25-35, 2001; and state pregnancy-smoking and birth data.

²⁰ Lightwood & Glantz, "Short-Term Economic and Health Benefits of Smoking Cessation – Myocardial Infarction and Stroke," *Circulation* 96(4), August 19, 1997.

²¹ Kabir, et al., "Coronary Heart Disease Deaths and Decreased Smoking Prevalence in Massachusetts, 1993-2003," *American Journal of Public Health* 98(8):1468-69, August 2008.

²² Hodgson, TA, "Cigarette Smoking and Lifetime Medical Expenditures," *The Milbank Quarterly* 70(1), 1992. CDC, "Projected Smoking-Related Deaths Among Youth—United States," *MMWR* 45(44):971-974, November 8, 1996, <http://www.cdc.gov/mmwr/preview/mmwrhtml/00044348.htm>. Health care costs are adjusted to 2015 dollars using the Consumer Price Index for Medical Care (MCPI) from the U.S. Bureau of Labor Statistics.

²³ Nusselder, W, et al., "Smoking and the Compression of Morbidity," *Epidemiology & Community Health*, 2000.

²⁴ Warner, K, et al., "Medical Costs of Smoking in the United States: Estimates, Their Validity, and Their Implications," *Tobacco Control* 8(3):290-300, Autumn 1999, <http://tc.bmjournals.com/content/vol8/issue3/index.shtml>.

The five-year savings to the state Medicaid program are estimated based on the number of adult Medicaid recipients expected to quit due to the tax increase and the costs averted per quitting Medicaid recipient.²⁶ Estimates for adults enrolled in state Medicaid programs include the additional expected enrollment in states that expanded their Medicaid eligibility as part of the Affordable Care Act²⁷ and adults who were previously eligible under existing rules and are expected to enroll in 2015, 2016, 2017. The projected Medicaid cost savings are calculated using per capita adult Medicaid spending data²⁸ and separately take into account the costs of newly-eligible adult Medicaid enrollees, previously-eligible but newly-enrolled adult Medicaid beneficiaries, adult Medicaid beneficiaries enrolled before 2014 (when most states expanded enrollment), as well as future projected cost increases. Additional data and cost analyses were provided through correspondence by Matthew Buettgens, Ph.D., and Hanna Recht at the Urban Institute.²⁹ Modeling and data provided by the Urban Institute was then updated in Fall 2014 through correspondence with Matt Broaddus at the Center for Budget and Policy Priorities. The proportion of the state Medicaid program's projected cost savings that would accrue to the state government are calculated based on the state's Federal Medical Assistance Percentage (FMAP), calculated separately for newly-eligible and previously-eligible enrollees. Cost saving projections for states that expanded Medicaid between February and December 2014 – Pennsylvania and New Hampshire – are not currently available. Only the projected cost savings that would accrue to the state government are reported.

All projected savings have been adjusted to 2015 dollars, using the Consumer Price Index for Medical Care (MCPI) from the U.S. Bureau of Labor Statistics. Forecasted costs are estimated using the average of the difference between annual medical inflation and annual inflation that occurred between the years 2008 and 2013. These projections do not include a range of additional short and long-term savings from other declines in smoking-caused health problems and other smoking-caused costs.³⁰

Projections for cigarette tax increases much higher than \$1.00 per pack are limited, especially for states with relatively low current tax rates, because of the lack of research on the effects of larger cigarette tax increase amounts on consumption and prevalence. Projections for cigarette tax increases much

²⁵ CDC, "Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Economic Costs—United States 2000-2004," *MMWR* 57(45):1226-1228, November 14, 2008, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm>.

²⁶ Miller, LS, et al., "State estimates of Medicaid expenditures attributable to cigarette smoking, fiscal year 1993," *Public Health Reports* 113(2):140-51, 1998.

²⁷ States considered to have expanded their Medicaid eligibility are those noted to be "Implementing expansion in 2014," according to: Kaiser Family Foundation, "Status of State Action on the Medicaid Expansion Decision, 2014." January 28, 2014. Available at <http://kff.org/health-reform/state-indicator/state-activity-around-expanding-medicare-under-the-affordable-care-act/>.

²⁸ Projected current and future costs are extrapolated from FY 2010 per capita Medicaid spending estimates from the Kaiser Family Foundation. State Health Facts. Accessed December 10, 2014. Available at <http://kff.org/medicaid/state-indicator/medicaid-payments-per-enrollee/>.

²⁹ Buettgens, M, et al., *Eligibility for Assistance and Projected Changes in Coverage Under the ACA: Variation Across States*, October 2013, <http://www.urban.org/publications/412918.html>.

³⁰ See, e.g., U.S. Department of the Treasury, *The Economic Costs of Smoking in the U.S. and the Benefits of Comprehensive Tobacco Legislation*, 1998.

lower than \$1.00 per pack are also limited because small tax increases are unlikely to produce significant public health benefits. Limited research suggests that tax increases of very large or small amounts may have different impacts on price than those of an amount close to \$1.00.

January 28, 2015

Projections change when new data or research findings become available and the underlying data and methodologies are updated or revised.

Please direct questions to:

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American Cancer Society Cancer Action Network: Melissa Maitin-Shepard, Melissa.Maitin-Shepard@cancer.org

Campaign for Tobacco-Free Kids' resources on state tobacco tax increases:

http://www.tobaccofreekids.org/what_we_do/state_local/taxes/

http://www.tobaccofreekids.org/facts_issues/fact_sheets/policies/tax/us_state_local/

American Cancer Society Cancer Action Network's resources on tobacco taxes:

<http://acscan.org/tobacco/taxes>



NEW REVENUES, PUBLIC HEALTH BENEFITS & COST SAVINGS FROM A \$1.56 CIGARETTE TAX INCREASE IN NORTH DAKOTA

Current state cigarette tax: 44 cents per pack (46th among all states and DC)

Annual health care expenditures in North Dakota directly caused by tobacco use: \$326 million

Projected New Annual Revenue from Increasing the Cigarette Tax by \$1.56 Per Pack: \$43.51 million

New Annual Revenue is the amount of additional new revenue over the first full year after the effective date. The state will collect less new revenue if it fails to apply the rate increase to all cigarettes and other tobacco products held in wholesaler and retailer inventories on the effective date.

Projected Public Health Benefits for North Dakota from the Cigarette Tax Rate Increase

Percent decrease in youth smoking:	23.3%
Youth under age 18 kept from becoming adult smokers:	7,500
Current adult smokers who would quit:	8,000
Premature smoking-caused deaths prevented:	4,400
5-Year reduction in the number of smoking-affected pregnancies and births:	1,300
5-Year health care cost savings from fewer smoking-caused lung cancer cases:	\$1.30 million
5-Year health care cost savings from fewer smoking-affected pregnancies & births:	\$3.21 million
5-Year health care cost savings from fewer smoking-caused heart attacks & strokes:	\$2.39 million
5-Year Medicaid program savings for the state:	\$900,000
Long-term health care cost savings from adult & youth smoking declines:	\$302.97 million

12.18.14 TFK / December 22, 2014

- Small tax increase amounts do not produce significant public health benefits or cost savings because the cigarette companies can easily offset the beneficial impact of such small increases with temporary price cuts, coupons, and other promotional discounting. Splitting a tax rate increase into separate, smaller increases in successive years will similarly diminish or eliminate the public health benefits and related cost savings (as well as reduce the amount of new revenue).
- Raising state tax rates on other tobacco products (OTPs) to parallel the increased cigarette tax rate will bring the state additional revenue, public health benefits, and cost savings (and promote tax equity). With unequal rates, the state loses revenue each time a cigarette smoker switches to cigars, roll-your-own tobacco, or smokeless tobacco products. To parallel the new \$2.00 per pack cigarette tax, the state's new OTP tax rate should be 50% of the wholesale price with minimum tax rates for each major OTP category linked to the state cigarette tax rate on a per-package or per-dose basis.

Explanations & Notes

Health care costs listed at the top of the page are from the U.S. Centers for Disease Control and Prevention (CDC). Annual health care expenditures in North Dakota directly caused by tobacco use are in 2009 dollars and are from the CDC's 2014 *Best Practices from Comprehensive Tobacco Control Programs*.

Projections are based on research findings that each 10% increase in the retail price of cigarettes reduces youth smoking by 6.5%, adult prevalence by 2%, and total cigarette consumption by about 4% (adjusted down to account for tax evasion effects). Revenues still increase because the higher tax rate per pack will bring in more new revenue than is lost from the tax-related drop in total pack sales.

The projections incorporate the effect of ongoing background smoking declines and the continued impact of any recent state cigarette tax increases on prices, smoking levels, and pack sales.

These projections are fiscally conservative because they include a generous adjustment for lost state pack sales (and lower net new revenues) from possible new smuggling and tax evasion after the rate increase and from fewer sales to smokers or smugglers from other states. For ways that the state can protect and increase its tobacco tax revenues and prevent and reduce contraband trafficking and other tobacco tax evasion, see the Campaign for Tobacco-Free Kids factsheet, *State Options to Prevent and Reduce Cigarette Smuggling and to Block Other Illegal State Tobacco Tax Evasion*, <http://tobaccofreekids.org/research/factsheets/pdf/0274.pdf>.

Projected numbers of youth stopped from smoking and dying are based on all youth ages 17 and under alive today. Savings to state Medicaid programs include estimated changes in enrollment resulting from the Affordable Care Act and state decisions regarding Medicaid expansion. Long-term cost savings accrue over the lifetimes of persons who stop smoking or never start because of the tax rate increase. All cost savings are in 2015 dollars.

Projections for cigarette tax increases much higher than \$1.00 per pack are limited, especially for states with relatively low current tax rates, because of the lack of research on the effects of larger cigarette tax increase amounts on consumption and prevalence. Projections for cigarette tax increases much lower than \$1.00 per pack are also limited because small tax increases are unlikely to produce significant public health benefits.

Ongoing reductions in state smoking rates will, over time, gradually erode state cigarette tax revenues, in the absence of any new rate increases. However, those declines are more predictable and less volatile than many other state revenue sources, such as state income tax or corporate tax revenues, which can drop sharply during recessions. In addition, the smoking declines that reduce tobacco tax revenues will simultaneously produce much larger reductions in government and private sector smoking-caused health care and other costs over time. See the Campaign for Tobacco-Free Kids factsheet, *Tobacco Tax Increases are a Reliable Source of Substantial New State Revenue*, <http://tobaccofreekids.org/research/factsheets/pdf/0303.pdf>.

The projections in the table on this fact sheet were generated using an economic model developed jointly by the Campaign for Tobacco-Free Kids (TFK) and the American Cancer Society Cancer Action Network (ACS CAN). The projections are based on economic modeling by Frank Chaloupka, Ph.D., and John Tauras, Ph.D., at the Institute for Health Research and Policy at the University of Illinois at Chicago and are updated annually. The state Medicaid cost savings projections, when available, are based on modeling done by Matthew Buettgens and Hannah Recht at the Urban Institute, with updates by Matt Broaddus at the Center for Budget and Policy Priorities.

For other ways states can increase revenues (and promote public health) beyond just raising cigarette tax rates, see the Campaign factsheet, *The Many Ways States Can Raise Revenue While Also Reducing Tobacco Use and Its Many Harms & Costs*, <http://tobaccofreekids.org/research/factsheets/pdf/0357.pdf>.

Additional information and resources to support tobacco tax increases are available at http://www.tobaccofreekids.org/facts_issues/fact_sheets/policies/tax/us_state_local/ and <http://acscan.org/tobacco/taxes/>.

For more on sources and calculations, see <http://www.tobaccofreekids.org/research/factsheets/pdf/0281.pdf>.

Campaign for Tobacco-Free Kids
Ann Boonn

American Cancer Society Cancer Action Network
Melissa Maitin-Shepard

The facts are in: Minnesota's 2013 tobacco tax increase is improving health

By Raymond Boyle, Frank J. Chaloupka and Lisa Mattson | 05:00 am

The Minnesota Legislature and Gov. Mark Dayton made the right decision for both the health of Minnesotans and the state budget by increasing the price of tobacco.

It has been a year and a half since Minnesota implemented the 2013 tobacco tax increase of \$1.60 per pack of cigarettes. Strong research — including state studies in the areas of health, employment and revenue — shows that the Minnesota Legislature and Gov. Mark Dayton made the right decision for both the health of Minnesotans and the state budget by increasing the price of tobacco.

Over the past several decades, Minnesota has aggressively sought to separate the facts from fiction when it comes to tobacco. Today, here's what is known:

- Tobacco is still a problem in Minnesota.
- Minnesota is realizing real health benefits from strong tobacco control efforts, including price increases.
- The tobacco industry continues to try to disregard the public's will and promote its profits over Minnesotans' health.

Let's look at each point:

Tobacco is still a problem in Minnesota

Smoking continues to be a leading cause of preventable death and disease in Minnesota. Each year, more than 5,100 Minnesotans die from tobacco-related diseases. The tobacco industry knows that 90 percent of adult smokers start before age 18. That means young people remain a target market, just as they were decades ago when tobacco products enjoyed little to no marketing restrictions. Still, the tobacco industry has changed with the times, finding new ways to attract new users

at a young age. Today, more than 55,000 Minnesota middle- and high-school students are using tobacco – that’s enough smokers to fill up nearly every sixth grade classroom in Minnesota’s public schools.

At the same time, the state has made great progress in reducing tobacco’s harms through education, cessation and price increases.

The 2013 tobacco tax is improving health

Research shows that tobacco price increases are one of the most effective ways of reducing smoking prevalence, preventing youth from starting and saving lives. With new data, Minnesota can confidently conclude what was predicted up front: This price increase benefits the health of all Minnesotans. Successes include:

- **Fewer Minnesota youth are smoking.** Since 2011, smoking among Minnesota high-school students dropped from 18.1 percent to 10.6 percent. This is the sharpest decline ever recorded by the Minnesota Youth Tobacco Survey and means thousands fewer Minnesota youth will become addicted adults.
- **Fewer adult Minnesotans are smoking.** The [2014 Minnesota Adult Tobacco Survey](#) (MATS) shows that 14.4 percent of adult Minnesotans now smoke. This is the lowest rate ever recorded in the state and a sharp decline from 16.1 percent in 2010, the last time the rate was measured.
- **More Minnesota smokers are quitting.** According to MATS, increasing the price of tobacco supports smokers in quitting. Among smokers who quit in the past year, majorities said that the price increase helped them to make quit attempts (62.8 percent) and to stay smoke-free (62.7 percent).
- **Tobacco sales have decreased.** Minnesota experienced a 24 percent reduction in cigarette sales, or 54.6 million packs, in the 12 months following implementation of the tobacco tax increase compared to the same 12 months of the previous year.
- **While tobacco sales are down, tax revenue is up.** Minnesota generated more than \$204 million in new tax revenue — a 56 percent increase over the previous year — while simultaneously 54.6 million fewer packs of cigarettes were sold.

The tobacco industry: What was true in the past is still true

The tobacco industry has a well-known track record of selling dangerous, addictive products and misleading the public about their health effects. Each year, the tobacco industry spends more than \$164 million in Minnesota alone marketing its deadly

products. To be clear, the profitability of the tobacco industry depends on selling dangerous products to a new generation of smokers.

It makes sense that the tobacco industry would react adversely to price increases because fewer smokers amounts to a revenue loss. Fewer smokers also means fewer kids are exposed to tobacco, fewer premature deaths and a reduced financial burden on all Minnesotans – the \$1.60 per pack increase will save Minnesotans more than \$1.65 billion in long-term tobacco-related health care costs. These messages are consistently left out of the tobacco industry's agenda.

In 2014, tobacco companies and their allies released a report from Dunham and Associates titled, "The Economic Consequences of the Recent Cigarette Tax Increase in Minnesota." Tax policy often faces dissenting opinions. However, the Dunham and Associates report meets the tobacco industry's political goals, but not the test of good research. The report ignores real data, but that is not surprising. A systematic review of 34 peer-reviewed studies found that the tobacco industry purposefully uses misleading arguments and tactics to keep tobacco taxes low.

One conclusion from the Dunham and Associates report is that smokers must be crossing over state lines to buy cigarettes in other states, thereby causing a loss of jobs in Minnesota. However, actual data suggests that Minnesotans are smoking fewer cigarettes and strongly suggests that *other states are not benefiting at Minnesota's expense.*

When comparing the 12 months after implementation of the tax with the same 12 months of the previous year, researchers found:

- Cigarette revenue and sales in Iowa and Wisconsin actually decreased.
- North Dakota and South Dakota collectively only saw a 2.7 percent increase (\$12 million) in tobacco tax revenue. Looking at actual packs sold, Minnesota sold 54.6 million fewer packs – a 24 percent reduction – while new sales in these two states only amounted to a total of 4.4 million additional packs (a 5.1 percent increase).
- Unemployment continues to fall below the statewide average in most Minnesota border counties, suggesting that there has been little economic backlash. In fact, other evidence shows that convenience stores are more profitable in states with higher tobacco taxes, likely reflecting shifts in consumer spending from tobacco

products to other products, as well as the store markups that raise prices by more than tax increases. Thus, tobacco revenues are maintained even as sales fall.

Get the facts

Minnesota continues to make successful advances in tobacco control to improve health. The tobacco industry continues to employ deceptive marketing tactics to protect its bottom line. Similar to when smoke-free laws were adopted, we will continue to see more data collected that supports price increases as a highly effective way to reduce tobacco's harms. This tax model works, and the proof need only to be found in the hard facts.

To view all supporting data on the 2013 tobacco tax increase, read the report, "[Get the Facts: Minnesota's 2013 Tobacco Tax Increase is Improving Health.](#)"

Raymond Boyle, Ph.D., M.P.H., is the director of research programs at [ClearWay Minnesota](#). Frank J. Chaloupka, Ph.D., is a professor of economics at the [University of Illinois Chicago](#). Lisa Mattson, M.D., is the immediate past president of the [Twin Cities Medical Society](#).

WANT TO ADD YOUR VOICE?

If you're interested in joining the discussion, add your voice to the Comment section below — or consider writing [a letter](#) or a longer-form [Community Voices](#) commentary. (For more information about Community Voices, email [Susan Albright](#) at salbright@minnpost.com.)

Cigarette and Tobacco Excise Taxes and Fees

Minnesota imposes a \$2.90/pack tax on cigarettes, annually indexed for inflation

Minnesota imposes an excise tax on the sale or possession of cigarettes of \$2.90 per pack of 20. The excise tax on cigarettes is imposed on a “per unit” basis—i.e., on the number of cigarettes sold, not as a percentage of the sale price. As a result, the tax does not vary based on the price of the brand purchased or change as the prices rise or fall. However, under 2013 legislation the tax rate is annually adjusted (each January 1) for the change in the average retail price of cigarettes in the state. The 2013 legislation set the cigarette excise tax rate at \$2.83 per pack (a \$1.60 increase); the first indexing adjustment, effective January 1, 2015, increased the rate by 7 cents to the \$2.90 per pack rate that now applies.

A per-pack tax applies in lieu of the general sales tax

Since 2005, cigarette sales have been exempt from state and local sales taxes. A per-pack tax applies instead of the sales tax. The commissioner of revenue annually sets this in-lieu tax based on a survey of Minnesota retail cigarette prices. The rate is set as an average of these prices and is reset January 1 for the calendar year. Effective January 1, 2015, the rate is 52.6 cents/pack. The tax does not replace local sales taxes, although cigarettes are exempt from these local taxes.

Payments made to settle state lawsuits against the tobacco industry have similar effects as excise taxes

Settlements of the states’ lawsuits against the tobacco companies have similar economic effects to cigarette taxes, since these settlement payments are passed along to consumers (nationally) as higher cigarette prices. However, they do not affect companies that were not part of the lawsuit or that have not entered the Master Settlement Agreement as participating manufacturers. To compensate for the lower prices of cigarettes produced by nonsettling companies, the 2003 Legislature imposed a 35-cent per-pack fee on those cigarettes. The 2013 Legislature increased this fee to 50 cents.

A 95 percent excise tax applies to other tobacco products

An excise tax of 95 percent of the wholesale price applies to other tobacco products, such as cigars, pipe tobacco, snuff, and chewing tobacco. Since this tax is a percentage of price, it fluctuates as the prices of the products change with two exceptions to this general rule, both enacted by the 2013 Legislature:

- A minimum tax applies to each container of moist snuff equal to the tax rate on a pack of 20 cigarettes.
- Premium cigars (hand-rolled with a wholesale price of \$2/cigar or more) are subject to a maximum tax of \$3.50/cigar.

A use tax can apply, if Minnesota tax has otherwise not been paid

A use tax applies to consumers who purchase untaxed cigarettes (e.g., over the Internet or in-person in another state) for use in Minnesota. The tax is the same as the rate of the excise tax. The use tax does not apply to one carton of cigarettes purchased in another state and brought into the state by the individual. For larger quantities brought into the state and for any quantity shipped to the consumer in Minnesota, the use tax applies.

The taxes are estimated to yield revenues of \$614 million in FY 2015

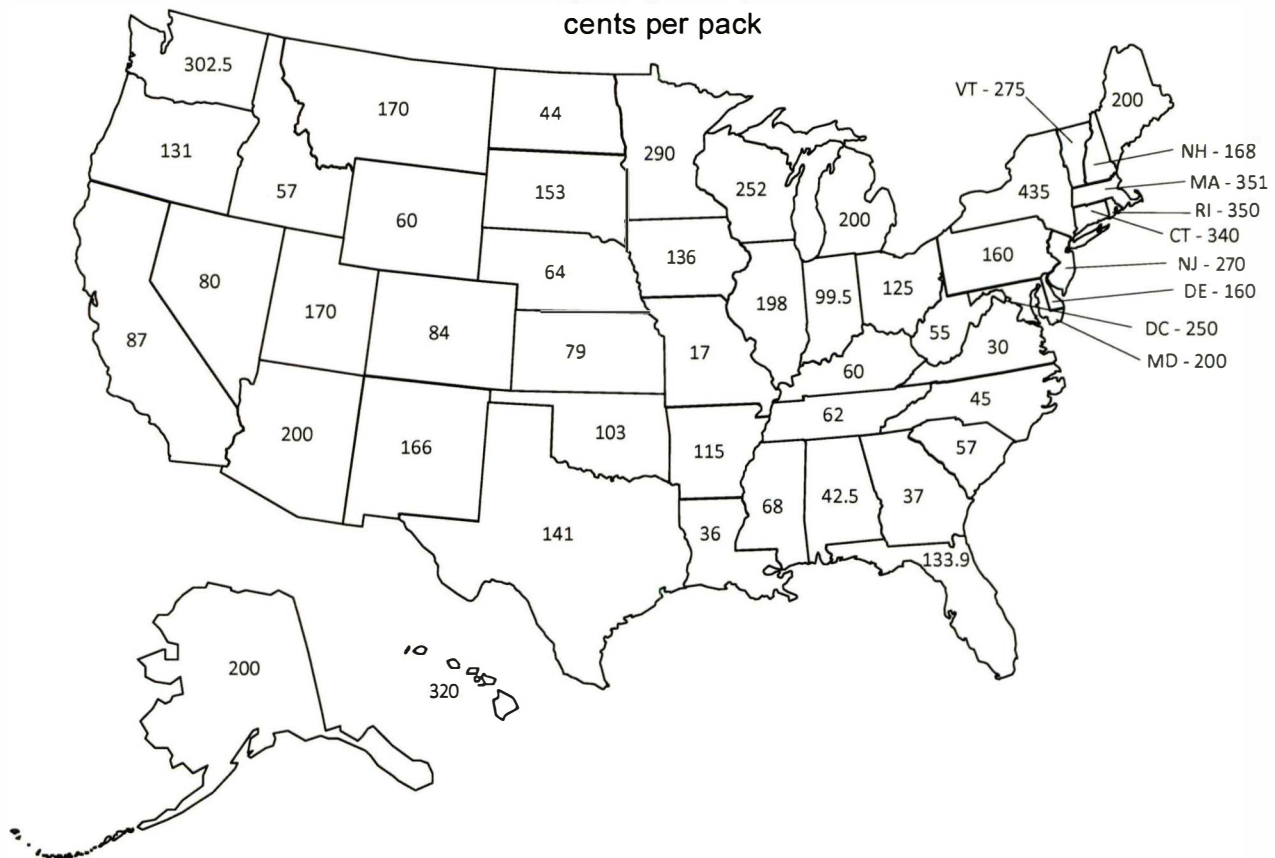
For fiscal year 2015, Minnesota Management and Budget estimates collections from the two excise taxes and the sales tax on cigarettes were \$614.4 million (2014 November forecast). Revenues from the tobacco products tax are deposited in the general fund. Each fiscal year, cigarette tax revenues of \$22.25 million go to fund the Academic Health Center, \$3.94 million to the medical education and research account, and the rest to the state general fund.

Minnesota has higher excise tax rate than the neighboring states

Because cigarettes can easily be transported, the tax rates in other states (especially border states) are important. Minnesota excise tax (\$2.90/pack) is higher than any of the bordering states: Wisconsin (\$2.52), South Dakota (\$1.53), Iowa (\$1.36), North Dakota (44 cents). All states' rates are shown on the map below. The map does not reflect local cigarette taxes; some of these local taxes are substantial (e.g., \$1.50 in New York City and \$4.18 per pack in Chicago). The map does not reflect the effect of general sales taxes (including Minnesota's per-pack tax in lieu of the sales tax). Some states have no sales tax or exempt cigarettes from sales taxation, lowering the overall tax burden.

State Cigarette Tax Rates*

as of 1/1/2015
cents per pack



*These exclude some significant local taxes
Source: Federation of Tax Administrators and other sources

For more information: Contact legislative analyst Joel Michael at joel.michael@house.mn.
The Research Department of the Minnesota House of Representatives is a nonpartisan office providing legislative, legal, and information services to the entire House.

40 AGs urge tight regulation of e-cigarettes

Mark Pratt, Associated Press 2:29 p.m. EDT September 24, 2013

A letter to the FDA raises concerns about the marketing of e-cigarettes to children.



(Photo: Ed Andrieski, AP)

BOSTON — Forty attorneys general sent a letter to the U.S. Food and Drug Administration on Tuesday urging the agency to meet its own deadline and regulate electronic cigarettes in the same way it regulates tobacco products.

The letter, co-sponsored by Massachusetts Attorney Martha Coakley and Ohio Attorney General Mike DeWine, says e-cigarettes are being marketed to children through cartoon-like advertising characters and by offering fruit and candy flavors, much like cigarettes were once marketed to hook new smokers.

At the same time, e-cigarettes are becoming more affordable and more widely available as the use of regular cigarettes decline as they become more expensive and less socially acceptable.

"Unlike traditional tobacco products, there are no federal age restrictions that would prevent children from obtaining e-cigarettes, nor are there any advertising restrictions," DeWine wrote.

Electronic cigarettes are metal or plastic battery-powered devices resembling traditional cigarettes that heat a liquid nicotine solution, creating vapor that users inhale. Users get nicotine without the chemicals, tar or odor of regular cigarettes.

E-cigarettes are being advertised during prime-time television hours at a time when many children are watching, according to the letter, which has led a surge in sales and use.

The health effects of e-cigarettes have not been adequately studied and the ingredients are not regulated, the letter said.

"People, especially kids, are being led to believe that e-cigarettes are a safe alternative, but they are highly addictive and can deliver strong doses of nicotine," Coakley said.

Citing a National Youth Tobacco Surveys conducted by the Centers for Disease Control and Prevention, the attorneys general said 1.8 million middle and high school students said they had tried e-cigarettes in 2012, mirroring increases in the use of the product by adults.

The letter urges the FDA to meet an Oct. 31 deadline to issue proposed regulations that will address the advertising, ingredients and sale to minors of e-cigarettes. The decision has been delayed in the past.

Tom Kiklas, co-founder and chief financial officer of the industry group, the Tobacco Vapor Electronic Cigarette Association, agrees that e-cigarettes should be regulated as tobacco products. The group represents dozens of companies involved in the manufacture and sales of e-cigarettes.

"We're in agreement with responsible restrictions on the marketing and sales of these products," including a ban on marketing aimed at children, he said. "What I cringe at is when e-cigarettes get demonized."

The other states and territories joining the letter to the FDA, according to Coakley's office, are: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virgin Islands, Washington, and Wyoming.

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What is the legal status of e-cigarettes?

The FDA will regulate e-cigarettes under its authority to regulate other tobacco products. The FDA has in the past detained or blocked incoming shipments of e-cigarettes from overseas manufacturers on the basis that e-cigarettes are unapproved drug delivery devices that must pass through the FDA's New Drug Application (NDA) process before they can legally be sold.

Two e-cigarette importers and distributors, Smoking Everywhere, Inc. and Sottera, Inc., brought a lawsuit against the FDA and sought a preliminary injunction to prevent the FDA from regulating e-cigarettes as a drug delivery device and from stopping the importation of e-cigarettes into the U.S. while the case is ongoing.²¹ The e-cigarette distributors argued that because their products use nicotine derived from tobacco, e-cigarettes should be regulated as "tobacco products," subject to much more limited restrictions that do not require pre-approval by the FDA. The United States District Court for the District of Columbia granted the preliminary injunction.

This ruling was affirmed by the United States Court of Appeals for the District of Columbia Circuit in December 2010. In April of 2011, the FDA decided it will not seek further review of this decision, but rather will regulate e-cigarettes as tobacco products under the Family Smoking Prevention and Tobacco Control Act in accordance with the court's opinion. In September 2009, the FDA announced that it will continue to bring enforcement actions against e-cigarette companies that make unsubstantiated health claims about their products.

E-cigarette sales are also subject to state law. Various state attorneys general have brought lawsuits alleging that e-cigarette distributors have violated state law by selling to minors or making unsubstantiated health claims.

TVECA Membership Agreement

The purpose of the TVECA is to ensure that member companies are responsible for their product quality, comply with all existing legislations both on a local and national level and provide for the public location to enact business. Below are the compliance regulations for member firms:

1. Make no medical claims regarding, but not limited to: safety, health benefits, smoking cessation.
2. Ensure product packaging does not appeal to young adults (e.g. cartoons, candy, etc.)
3. Ensure marketing materials do not appeal to young adults (i.e. BE COOL).
4. Show prominently, the TVECA approved warning on products that contain nicotine, on print materials, and throughout member websites.
5. When offering e-liquid, ensure all containers have child-safety caps.
6. When offering e-liquid, the maximum size bottle containing nicotine will be 10ml in Europe, and undermanned in the United States..
7. Show clearly, lot numbers and product manufactured dates on individual cartridge packaging (applies also to e-liquid).
8. Show clearly, nicotine level on individual cartridge packaging (applies also to e-liquid).
9. List all basic ingredients on any two items below:
 - A) Product Packaging
 - B) Instruction Card
 - C) Company Website
10. All TVECA members will have in-office staff available to expeditiously field incoming customer service issues during normal business hours.
11. All TVECA members must display on their websites their place of business and address where consumers may conduct business in person. No P.O. Boxes. (Brick and Mortar Business Only).
12. Display cartridge or e-liquid nicotine levels numerically (e.g. 0 mg/ml, 6 mg/ml, 12 mg/ml etc.) and/or show nicotine percentage per content of (e.g. 20 mg/ml =2.0%).
13. When offering e-liquid, sell a maximum nicotine level to the consumer to be no greater than 20 mg/ml or 2.0% of total volume of e-cig cartridge.
14. Instruct consumers on e-cig packaging that all components of the electronic cigarettes are fully recyclable.
15. Ensure, with reasonable certainty (e.g. verification services), online buyers to be of legal age to purchase in area consumer resides and/or more specifically where the product will be shipped. E-cig distributors are responsible to abide by all state legislation in regard to age verification for the purchase of product.
16. Ensure, with reasonable certainty (e.g. state issued photo ID), in-person buyers to be of legal age to purchase in area consumer resides and/or more specifically the area of the place of business.



3
SB 2322
2-16-15

Senate Appropriations Committee
10:30 AM, Monday, February 16, 2015
SB 2322
Deb Knuth
North Dakota American Cancer Society Cancer Action Network (ACS CAN)
www.acscan.org

Chairman Holmberg, and members of the Senate Appropriations Committee, my name is Deb Knuth and I am the director of government relations in North Dakota for the American Cancer Society Cancer Action Network (ACS CAN).

The American Cancer Society Cancer Action Network (ACS CAN) appreciates the opportunity to voice our support of Senate Bill 2322 to the committee.

ACS CAN released polling results in January 2015, showing 69 percent of North Dakota voters favor increasing the state tobacco tax. ACS CAN commissioned the poll done by Public Opinion Strategies. The telephone survey was completed December 15-17, 2014, among 500 likely voters in North Dakota. I've included the entire poll results for your perusal.

Increasing cigarette excise taxes is an evidence-based policy approach to accomplishing the critical public health goals of reducing smoking-related death and disease. Cigarette taxes are also a powerful economic tool resulting in large savings in health care costs. That's why forty-seven states and the District of Columbia have increased their cigarette taxes since 2002; some states more than once. In 2013, three states including Massachusetts, Minnesota and Oregon increased their cigarette taxes and in 2014, Vermont, approved legislation increasing their cigarette tax.

In North Dakota, if we raised the cigarette tax by \$1.56 per pack, our state would annually increase revenue by \$43.51 million. More importantly, however, we would decrease youth smoking and encourage adult smokers to quit.

ACS CAN believes revenue generated by this legislation should be directed toward public health goals and use the revenue for cancer programs, heart programs and other community health programs in the state.

We are joined in our support of raising the state's cigarette tax, as well as raising state tax rates on other tobacco products (OTPs), by 40 health and business organizations in the Raise it for Health-ND coalition.

Implementing strong tobacco control policies at the state level has been proven to reduce smoking and discourage new smokers. Through a three-pronged approach – higher tobacco taxes, comprehensive smoke-free laws, and fully funded tobacco prevention and cessation programs– experience and evidence shows that state tobacco control policies can help curb the tobacco burden in North Dakota.

Thank you for your time and consideration of this important issue

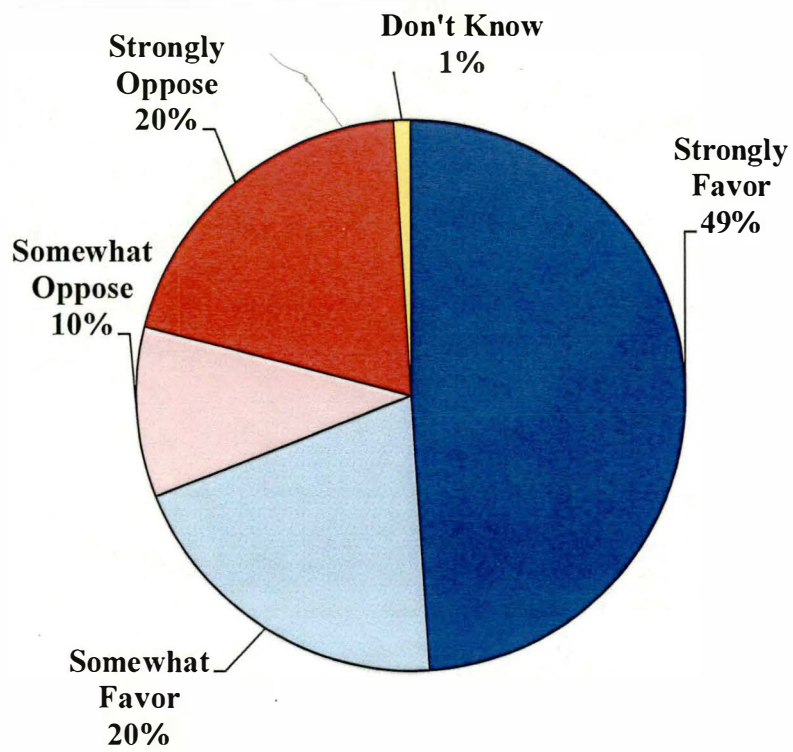
The American Cancer Society Cancer Action Network ("ACS CAN") is the advocacy affiliate of the American Cancer Society (the "Society"). The Society is a nationwide, community-based, voluntary health organization dedicated to eliminating cancer as a major health problem by preventing cancer, saving lives and diminishing suffering from cancer, through research, education, advocacy, and service. The American Cancer Society is the largest voluntary health organization in the United States.

North Dakotans overwhelmingly favor an increase in the state tobacco tax.

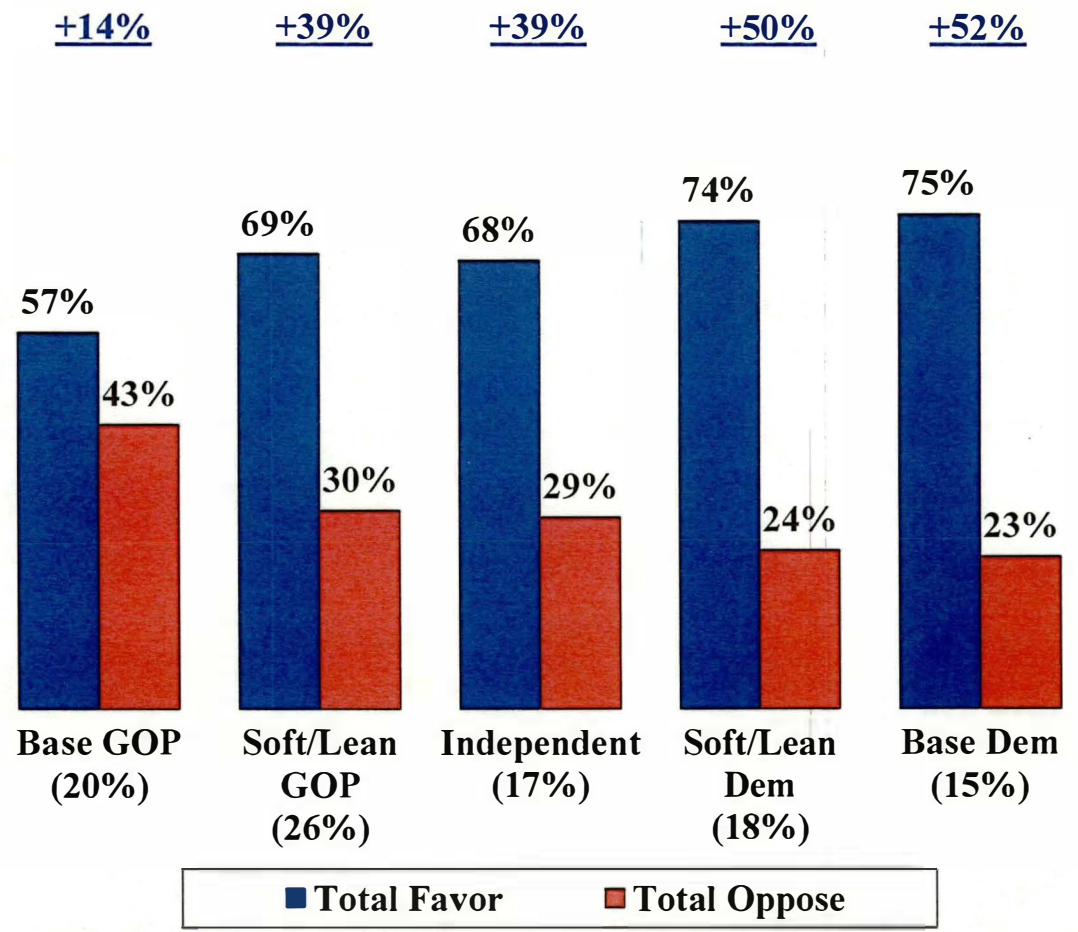
“As you may know, the state tobacco tax is currently forty-four cents per pack of cigarettes, which ranks forty-sixth lowest of fifty states. Also, North Dakota has not increased the state tobacco tax since 1993. Would you favor or oppose a proposal that would raise the state tobacco tax and use the revenue for cancer programs, heart programs, and other community health programs?”

Overall

Total Favor: 69%
Total Oppose: 30%



By Party



3/3

3.3

df

2/16/2015



**Kristie Wolff – Program Manager, American Lung Association in North Dakota
Support for SB2322
North Dakota Senate Appropriations Committee**

February 16, 2015

Chairman Holmberg and members of the Senate Appropriations Committee, my name is Kristie Wolff, I am the Program Manager for the American Lung Association in North Dakota.

Based on the American Lung Association's mission to save lives by improving lung health and preventing lung disease through Education, Advocacy, and Research I am here to testify in support of SB2322.

On January 21, 2015, the American Lung Association released its 13th annual State of Tobacco Control Report. This report tracks progress on key tobacco control policies at the federal and state level. Grades are assigned based on whether laws are adequately protecting citizens from tobacco-related death and disease.

North Dakota received an "F" grade for tobacco taxes. At only 44 cents per pack, North Dakota's cigarette tax is among the lowest in the nation. Higher prices for tobacco have been proven to be an effective tool to reduce smoking, especially among youth.

Let's take Minnesota for example. In 2013, the Minnesota Legislature passed a law that increased the tax on cigarettes by \$1.60 per pack.

In 2014 The Minnesota Adult Tobacco Survey (MATS) was conducted, interviewing more than 9,000 Minnesotans age 18 and older by telephone. The results were released January 22, 2015. MATS findings showed that increasing the price of tobacco did support smokers in quitting.

The percentage of adult Minnesotans who smoke cigarettes dropped from 16.1% in 2010 to 14.4% in 2014 (approximately 580,000 adults).

Among smokers who successfully quit since the \$1.60 tax increase:

- 62.8 percent reported that the price increase helped them make a quit attempt
- 62.7 percent reported that it helped keep them from smoking again.

Youth rates saw an even more significant decrease based on the 2014 Minnesota Youth Tobacco Survey. This survey was conducted by the Minnesota Department of Health at 70 Public schools with an overall participation of 4,243 students in grades 6 through 12. The survey found:

- The percent of high school students who smoked cigarettes dropped from 18.1 percent in 2011 to 10.6 percent in 2014, the steepest decline recorded by the survey.
- The percent of high school students using any of the conventional tobacco products fell from 25.8 percent in 2011 to 19.3 percent in 2014, also the sharpest drop ever recorded by the survey. (Conventional products are cigarettes; cigars, cigarillos and little cigars; smokeless tobacco, and pipes.)

Having one of the lowest tobacco taxes in the nation is not something that we should be proud of. It is time to raise the tobacco tax for the health of our state and to help protect our youth from a lifelong addiction to nicotine and the deadly consequences of tobacco. So today I am asking you to please give a do pass recommendation to SB2322.

Thank you.

North Dakota Report Card



N O R T H D A K O T A

Tobacco Prevention and Control Program Funding: **A**

FY2015 State Funding for Tobacco Control Programs:	\$9,518,091
FY2015 Federal Funding for State Tobacco Control Programs:	\$1,205,818*
FY2015 Total Funding for State Tobacco Control Programs:	\$10,723,909
CDC Best Practices State Spending Recommendation:	\$9,800,000
Percentage of CDC Recommended Level:	109.4%
State Tobacco-Related Revenue:	\$64,300,000

Thumbs up for North Dakota for funding its state tobacco control program at or above the CDC-recommended level, one of only two states to do so this year.

*Includes tobacco prevention and cessation funding provided to states from the Centers for Disease Control and Prevention and U.S. Food and Drug Administration.

Smokefree Air: **A**

OVERVIEW OF STATE SMOKING RESTRICTIONS:

Government Worksites: Prohibited
Private Worksites: Prohibited
Schools: Prohibited
Child Care Facilities: Prohibited
Restaurants: Prohibited
Bars: Prohibited
Casinos/Gaming Establishments: Prohibited (tribal establishments exempt)
Retail Stores: Prohibited
Recreational/Cultural Facilities: Prohibited
Penalties: Yes
Enforcement: Yes
Preemption: No
Citation: N.D. CENT. CODE §§ 23-12-9 to 23-12-11 (2013).

Tobacco Taxes: **F**

CIGARETTE TAX:

Tax Rate per pack of 20:	\$0.44
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OTHER TOBACCO PRODUCT TAXES:

Tax on little cigars: Equalized: Yes; Weight-Based: No
Tax on large cigars: Equalized: Yes; Weight-Based: No
Tax on smokeless tobacco: Equalized: No; Weight-Based: Yes
Tax on pipe/RYO tobacco: Equalized: Yes; Weight-Based: No
Tax on Dissolvable tobacco: Equalized: No; Weight-Based: Yes

For more information on tobacco taxes, go to: <http://slati.lung.org/slati/states.php>

Access to Cessation Services: **C**

OVERVIEW OF STATE CESSATION COVERAGE:

STATE MEDICAID PROGRAM:

Medications: Covers all 7 recommended cessation medications*
Counseling: Individual and group counseling covered
Barriers to Coverage: Duration limits, annual limits, minimal co-payments required, prior authorization required and use of counseling required to get medications
Medicaid Expansion: Yes

STATE EMPLOYEE HEALTH PLAN(S):

Medications: Covers all 7 recommended cessation medications*
Counseling: Covers individual, group, online and phone counseling
Barriers to Coverage: Dollar limits apply to medications and counseling

STATE QUITLINE:

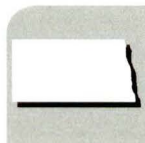
Investment per Smoker: \$7.05; the average investment per smoker is \$3.65

OTHER CESSATION PROVISIONS:

Private Insurance Mandate: Yes
Tobacco Surcharge: No prohibition or limitation on tobacco surcharges
Citation: See North Dakota Tobacco Cessation Coverage page for specific sources.

*The 7 recommended cessation medications are: NRT Gum, NRT Patch, NRT Nasal Spray, NRT Inhaler, NRT Lozenge, Varenicline (Chantix) and Bupropion/Zyban.

North Dakota State Highlights:



Tobacco use remains the leading cause of preventable death and disease in the United States. To address this enormous toll, the American Lung Association and its partners have committed to three bold goals:

1. Reduce smoking rates, currently at about 18 percent, to less than 10 percent by 2024;
2. Protect all Americans from secondhand smoke by 2019; and
3. Ultimately eliminate the death and disease caused by tobacco use.

The American Lung Association in North Dakota recognizes that these bold goals will only be met in North Dakota if these following three actions are taken by our elected officials:

1. Raise the state cigarette tax currently at 44 cents per pack to \$2.00 per pack;
2. Restrict the sale of e-cigarettes to minors;
3. Keep in place the current fully funded tobacco prevention program and smokefree law as voted on by the people of the state.

North Dakota's legislature only meets once every two years, so there was no legislative session in North Dakota in 2014. During this off-year, the American Lung Association in North Dakota worked to continue to educate decision makers about electronic cigarettes, which will likely be a big issue during the 2015 legislative session. The goal is to make sure the current law in North Dakota that prohibits the use of e-cigarettes anywhere smoking is not allowed remains intact and strong.

The American Lung Association in North Dakota is part of a broad based coalition called Raise it for Health ND. Currently, North Dakota's tobacco tax is one of the lowest in the nation and hasn't been increased since 1993. The goal of the coalition is to raise the tobacco tax during the 2015 North Dakota legislative session. The Raise it for Health ND coalition launched a statewide education campaign in 2014. The coalition has found that a large percentage of residents in the state that they have spoken with do support an increase in the state's tobacco tax and many were also appalled by how low the current cigarette tax, at only 44 cents per pack really is.

These goals can be reached by continued support, education, and outreach by the Raise it for Health ND Coalition members to both the public and elected officials and by the residents of North Dakota voicing their support for tobacco control issues. During the 2015 legislative session the American Lung Association in North Dakota and Raise it for Health ND Coalition will need compelling personal testimony along with strong data and information to move our goals forward.

North Dakota State Facts	
Economic Costs Due to Smoking:	\$442,053,000
Adult Smoking Rate:	21.2%
High School Smoking Rate:	19.0%
Middle School Smoking Rate:	5.8%
Smoking Attributable Deaths:	877
Smoking Attributable Lung Cancer Deaths:	259
Smoking Attributable Respiratory Disease Deaths:	245

Adult smoking rate is taken from CDC's 2013 Behavioral Risk Factor Surveillance System. High school smoking rate is taken from the 2013 Youth Risk Behavioral Surveillance System. Middle school smoking rate is taken from the 2011 Youth Tobacco Survey.

Health impact information is taken from the Smoking Attributable Mortality, Morbidity and Economic Costs (SAMMEC) software. Smoking attributable deaths reflect average annual estimates for the period 2000-2004 and are calculated for persons aged 35 years and older. They do not take into account deaths from burns or secondhand smoke. Respiratory diseases include pneumonia, influenza, bronchitis, emphysema and chronic airway obstruction. The estimated economic impact of smoking is based on smoking-attributable health care expenditures in 2004 and the average annual productivity losses for the period 2000-2004.

NORTH DAKOTA

To get involved with your American Lung Association, please contact:

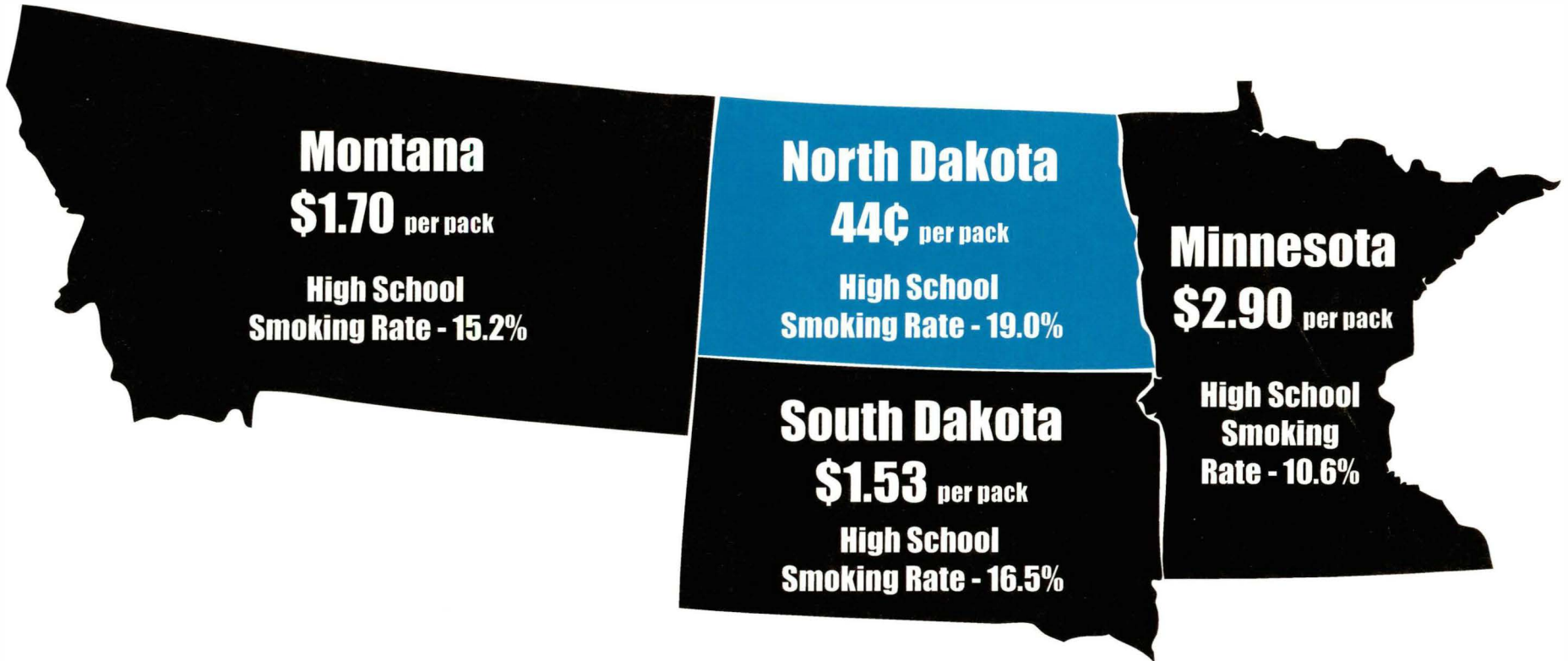
American Lung Association in North Dakota
701-223-5613
www.Lung.org/northdakota

4/5

4.4

How Do We Compare?

Current tobacco tax and youth smoking rates for North Dakota and surrounding states.



5/5



4.5

National Average: \$1.54
Average of Non-tobacco Producing States: \$1.68
Average of Tobacco Producing States: 48.5¢
Average of Surrounding States: \$2.04

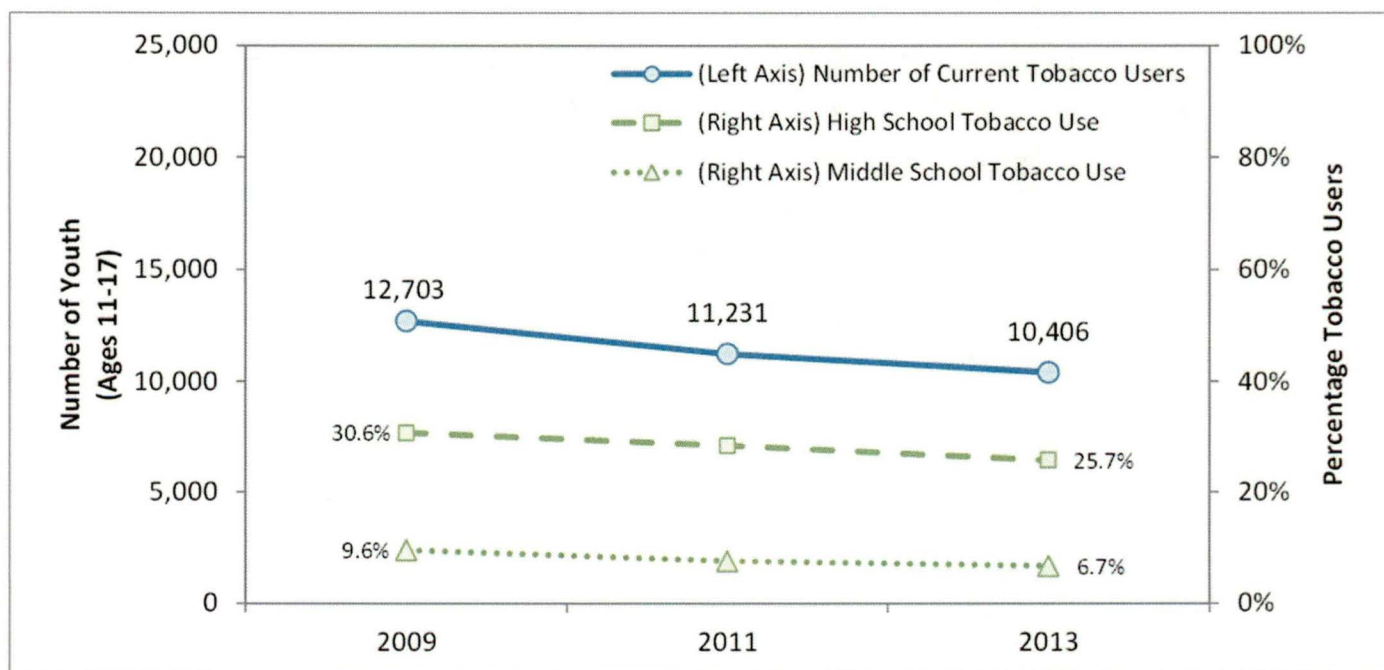
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Senate Bill 2322
Senate Appropriation Committee
Testimony - June Herman, American Heart Association

H5
2-16-15

Good morning Chairman Holmberg and members of the Senate Appropriations Committee. For the record, I am June Herman, Regional Vice President of Advocacy for the American Heart Association. I am here today to ask for your Do Pass recommendation on Senate Bill 2322, and to support an amendment to direct a portion of the new revenue to critical healthcare needs.

One only needs to look to the last time North Dakota had a significant tobacco tax increase to know that it does result in a reduction of tobacco use in North Dakota. In 2009, the tobacco tax increased by \$1. In this tax increase, the revenue went to the federal level, not to North Dakota bank accounts.



Retails businesses survived. Tobacco industry still profited. However, North Dakota produced fewer younger smokers. And we know adults also quit. Certainly some continued to smoke, and we still had youth start smoking. But as a state, we had fewer youth start smoking. That is the socio-economic benefit you are providing to our youth and future generation, reducing the number who become addicted to tobacco products, while investing in smoking cessation to aide those who seek to quit.

North Dakota supports a balance of business freedom, regulations and health protections. You ensure such as we experience economic success in this oil boom, addressing appropriate business and individual practices and health protections with the laws, funding and enforcement. For example, the handling of the disposal of industry products are regulated in order to protect public health, as we allow business to thrive. The process is driven by health protections, not ultimate profit margins for any business practice.

You've seen the validated models of revenue, reduced tobacco use that SB 2322 will produce. Retail and industry will continue to thrive, as they have after ND's last federal tobacco tax increase, and as they do in the neighboring states who have taken this same step with a state level increase.

SB 2322 proposes a tax increase that can reduce tobacco use in North Dakota. If amended, the bill can also address essential areas of health needs that come before you in significant need of funding – from healthcare costs of hospitals or state Medicaid, or those expense centers related to delivery of urgent care and preventative services. SB 2322 is a benefit to the state in health outcomes and in providing available resources that in turn should be redirected to health funding needs you are being asked to fund. SB 2322, especially if amended to support health funding shortfalls and needs, makes perfect budget sense for North Dakota.

Testimony - North Dakota Senate Appropriations Committee
2/16/15
Theresa Will, RN/Administrator
City-County Health District, Valley City

#6
SB 2322

Good afternoon, Chairman Holmberg and Members of the Senate Appropriations Committee.

My name is Theresa Will, I am the Director at City-County Health District, the Local Public Health Unit for Barnes County, located in Valley City. I am also the Chair for the ND SACCHO (the State Association of County and City Health Officials). Both in my role as a LPHU administrator and as SACCHO Chair, I wanted to voice support for SB 2322. We certainly understand the numerous, positive, health-related benefits that a tobacco tax which is somewhat comparable to our bordering states would have. We also wanted to let you know that we would like to see the funding allocated in a manner that would be similar to HB 1421 with 60% going to the Community Health Trust Fund, 15% to ND Cities and 25% to ND Counties for local public health purposes.

In addition to providing the health benefits of increasing the tax on "original" tobacco products, SB 2322 also correctly classifies electronic cigarettes as the tobacco product that they truly are.

Please support SB 2322.

b.1

#17
2-16-15

Testimony: **SB 2322**
North Dakota Senate Appropriations Committee
February 17, 2015
Elizabeth Hughes, Ph.D., RRT
Bismarck, North Dakota

Honorable Senators, please support SB 2322 to save lives.

As a respiratory therapist, I watched too many patients suffer, and some die from their addiction to tobacco. Now, you have the power, with your vote, to prevent the suffering and death of at least 5300 kids who will not use tobacco products if you make it too expensive for them to start.

You also have the support of 69% of North Dakotans who want you to raise the tobacco tax to save these kids. You have support from the editorial boards of the state's largest newspapers, and you have the evidence-based CDC guidelines that consider raising tobacco tax a "best practice." Kids have been at the legislature on a regular basis over the last few weeks asking you to raise this tax to help them avoid addiction.

These are pretty good arguments, compared to what the tobacco lobby has to say, don't you think? You have great power, and I implore you to use it to prevent suffering, addiction and death.

You also have the power to make sure that the newest tobacco products, e-cigarettes, are treated and taxed as the tobacco products that they are. E-cigarettes are nicotine delivery devices. Any definition that identifies e-cigarettes as something other than a tobacco product excludes them from being taxed for what they really are, and that sends the wrong message to kids - that they are safe, when it has not been proven that they are. E-cigarettes are NOT approved by the FDA as effective cessation devices. Even the tobacco industry says that e-cigarettes contain nicotine (and are thus a tobacco product) and are not a cessation device!

Currently, e-cigarettes are not taxed like other tobacco products, but you have the power to correct that.

If you need further evidence, I have included the abstract for a recent meta-analysis review of e-cigarettes. All of the 44 articles reviewed in this meta-analysis were from peer-reviewed medical journals. Please take the time to review these findings!

Thank you,
Beth Hughes Ph.D., RRT
Bismarck, ND

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Tob Control 2014;23:ii36-ii40 doi:10.1136/tobaccocontrol-2013-051470

• **Original article**

Electronic cigarettes: human health effects

 **OPEN ACCESS**

1. **Priscilla Callahan-Lyon**
1. Correspondence to Dr Priscilla Callahan-Lyon, Office of Science, Center for Tobacco Products, FDA, 9200 Corporate Blvd, Rockville, MD 20850, USA; priscilla.callahan-lyon@fda.hhs.gov
- Received 2 December 2013
- Accepted 12 February 2014

→

Abstract

Objective With the rapid increase in use of electronic nicotine delivery systems (ENDS), such as electronic cigarettes (e-cigarettes), users and non-users are exposed to the aerosol and product constituents. This is a review of published data on the human health effects of exposure to e-cigarettes and their components.

Methods Literature searches were conducted through September 2013 using multiple electronic databases.

Results Forty-four articles are included in this analysis. E-cigarette aerosols may contain propylene glycol, glycerol, flavourings, other chemicals and, usually, nicotine. Aerosolised propylene glycol and glycerol produce mouth and throat irritation and dry cough. No data on the effects of flavouring inhalation were identified. Data on short-term health effects are limited and there are no adequate data on long-term effects. Aerosol exposure may be associated with respiratory function impairment, and serum cotinine levels are similar to those in traditional cigarette smokers. The high nicotine concentrations of some products increase exposure risks for non-users, particularly children. The dangers of secondhand and thirdhand aerosol exposure have not been thoroughly evaluated.

Conclusions Scientific evidence regarding the human health effects of e-cigarettes is limited. While e-cigarette aerosol may contain fewer toxicants than cigarette smoke, studies evaluating whether e-cigarettes are less harmful than cigarettes are inconclusive. Some evidence suggests that e-cigarette use may facilitate smoking cessation, but definitive data are lacking. No e-cigarette has been approved by FDA as a cessation aid. Environmental concerns and issues regarding non-user exposure exist. The health impact of e-cigarettes, for users and the public, cannot be determined with currently available data.



North Dakota Tobacco Prevention and Control Executive Committee

Center for Tobacco Prevention and Control Policy
4023 State Street, Suite 65 • Bismarck, ND 58503-0638

Phone 701.328.5130 • Fax 701.328.5135 • Toll Free 1.877.277.5090

#8

Testimony
Senate Bill 2322
3:30 p.m., February 16, 2015
Senate Appropriations Committee
Senator Ray Holmberg, Chair

Good afternoon, Chairman Holmberg and Senate Appropriations members. I am Jeanne Prom, executive director of the North Dakota Center for Tobacco Prevention and Control Policy. I am testifying in support of Senate Bill 2322, which proposes to tax all tobacco products, including the new and emerging tobacco products.

The Center's Governor-appointed Advisory Committees is part of Raise It For Health because it supports our agency mission, which is to save lives and save money by cutting tobacco use in our state over years, not decades. The 2000 Surgeon General's Report identifies increasing the price of tobacco as the single most effective way to prevent initiation among nonsmokers and to reduce consumption.

In tobacco prevention, the metaphor of the three-legged stool is often used to describe three statewide policies that need to be in place before a state benefits from a sharp and sustained reduction in tobacco use. The three policies are:

1. A comprehensive tobacco prevention program, funded at the CDC recommended level, which North Dakota has;
2. A strong statewide smoke-free law, which North Dakota has; and
3. Tobacco that is priced to keep kids out of the market and prompt current users to quit and voluntarily take themselves out of the market by using their money to buy other things.

The people in North Dakota support all three of the legs of this stool, according to the most recent poll conducted by the American Cancer Society Cancer Action Network.

SB 2322 gives the Legislative Assembly the opportunity to provide this third leg.

Because SB 2322 is a tax bill, it will generate revenue. This revenue is directed into the State General Fund. No tobacco prevention or cessation programs at this agency or the Department of Health receive funding from SB 2322. However, the added revenue does provide this Legislative Assembly another opportunity to carry out its duty to protect the public health and safety in other ways by using this revenue for other public health and safety purposes or to meet other needs.

Thank you for your consideration of SB 2322. I am happy to answer any questions.

8.1

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ND Petroleum Marketers Association
ND Retail Association



#9
2-16-15

“VOTE NO” on SB 2322

DID anyone in this legislative body campaign on the promise of increasing business taxes of any kind during the last election cycle?

Only tax increase offered this session has been for tobacco tax.

This is an unfair business tax. ND economy doesn't need increased revenue from tobacco at this time.

Business economy is strong. Why impose a 300% tax increase on a legal product (cigarettes) bought by adult consumers.

This is a regressive tax. It will only harm the lower income folks in the state. Higher taxes don't necessarily mean less smoking. Yes some people will quit, but more are just as likely to get their smokes from alternative, and not necessarily safer, outlets.

“Prohibition by Price” doesn't work. Information obtained from a study conducted by the Mackinac Center for Public Policy suggests: Higher taxes will lead to illegal trafficking of tobacco products. It will also assuredly yield greater lawlessness: rampant smuggling; theft; violence against people, police and property.

Smuggling into the state would leap to 21.4 percent of the total market. That is, of all the cigarettes consumed in North Dakota in the following year, more than 21 percent would be illegal.

In 2014, the Bureau of Alcohol, Tobacco, Firearms, and Explosives said “\$7 billion to \$10 billion in state and federal tax revenue is lost each year because of [cigarette] smuggling,

Only one of North Dakota's Native American reservations currently collects and remits sales tax back to the state on tobacco products. How is the state going to police what is sure to be an uptick in illegal purchases of tobacco products brought into communities off the nearby reservation and sold with no taxes charged? State and Local law enforcement are already strapped enough with the surge of human and drug trafficking into the state without having to deal with policing what is normally a legal sale of a legal product, but now suddenly becomes a black market and tax evasion issue.

A better solution is for North Dakota to maintain far more rational taxing policies.

VOTE NO on SB 2322

16

9.1

Cigarette Taxes and Cigarette Smuggling by State, 2013

By Scott Drenkard & Joseph Henchman

Economist & Manager
of State Projects

Vice President, Legal
& State Projects

Key Findings

- Large differentials in cigarette taxes across states create incentives for black market sales.
- Smuggled cigarettes make up substantial portions of cigarette consumption in many states, and greater than 20 percent of consumption in fifteen states.
- The highest inbound cigarette smuggling rates are in New York (58.0 percent), Arizona (49.3 percent), Washington (46.4 percent), New Mexico (46.1 percent), and Rhode Island (32.0 percent).
- The highest outbound smuggling rates are in New Hampshire (28.6 percent), Idaho (24.2 percent), Virginia (22.6 percent), Delaware (22.6 percent), and Wyoming (21.0 percent).
- Smuggling rates jumped substantially in Illinois after hikes in state and county excise tax rates, from 1.1 percent of consumption in the last edition to 20.9 percent in this edition.
- Cigarette tax rates increased in 30 states and the District of Columbia between 2006 and 2013.

Public policies often have unintended consequences that outweigh their benefits. One consequence of high state cigarette tax rates has been increased smuggling as criminals procure discounted packs from low-tax states to sell in high-tax states. Growing cigarette tax differentials have made cigarette smuggling both a national problem and a lucrative criminal enterprise.

Each year, scholars at the Mackinac Center for Public Policy, a Michigan think tank, use a statistical analysis of available data to estimate smuggling rates for each state.¹ Their most recent report uses 2013 data and finds that smuggling rates generally rise in states after they adopt large cigarette tax increases. Smuggling rates have dropped in some states, however, often where neighboring states have higher cigarette tax rates. Table 1 shows the data for each state, comparing 2013 and 2006 smuggling rates and tax changes.

New York is the highest net importer of smuggled cigarettes, totaling 58.0 percent of the total cigarette market in the state. New York also has the highest state cigarette tax (\$4.35 per pack), not counting the additional local New York City cigarette tax (an additional \$1.50 per pack). Smuggling in New York has risen sharply since 2006 (+62 percent), as has the tax rate (+190 percent).

Smuggling in Illinois has also increased dramatically, from 1.1 percent to 20.9 percent since the last data release. This is likely related to the fact that the Illinois state cigarette tax rate was hiked from \$0.98 to \$1.98 in mid-2012. This increase in smuggling may continue in future data editions, as more recent increases in both the Cook County rate (from \$2.00 to \$3.00 per pack, effective March 1, 2013) and the Chicago municipal rate (from \$0.68 to \$1.18, effective January 10, 2014) have brought the combined state-county-municipal rate in the city of Chicago to \$6.16 per pack of cigarettes, the highest combined rate in the country.²

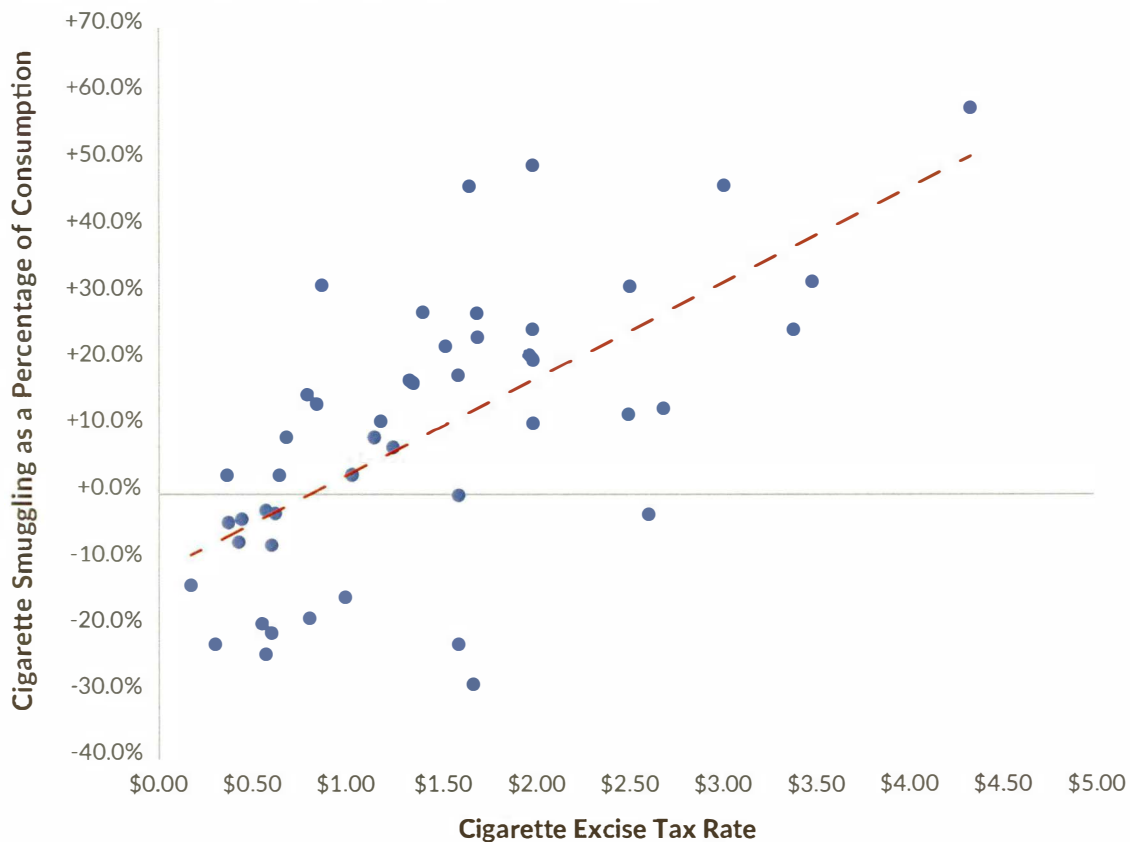
Other peer-reviewed studies provide support for these findings.³ Recently, a study in Tobacco Control examined littered packs of cigarettes in five northeast cities, finding that 58.7 percent of packs did not have proper local stamps. The authors estimated 30.5 to 42.1 percent of packs were trafficked.⁴

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- 1 See, e.g., Mackinac Center for Public Policy, Michael LaFaive, Todd Nesbit, & Scott Drenkard, *Cigarette Smugglers Still Love New York and Michigan, but Illinois Closing In* (Feb. 2015), <http://www.mackinac.org/20900>; Mackinac Center for Public Policy, Michael LaFaive, & Todd Nesbit, *Cigarette Smuggling Still Rampant in Michigan*, *Nation* (Feb. 2014), <http://www.mackinac.org/19725>; Mackinac Center for Public Policy, Michael LaFaive, & Todd Nesbit, *Higher Cigarette Taxes Create Lucrative, Dangerous Black Market* (Jan. 2013), <http://www.mackinac.org/18128>; Mackinac Center for Public Policy, Michael LaFaive, *Cigarette Taxes and Smuggling 2010: An Update of Earlier Research* (Dec. 2010), <http://www.mackinac.org/14210>; Mackinac Center for Public Policy, Michael LaFaive, Patrick Fleenor, & Todd Nesbit, *Cigarette Taxes and Smuggling: A Statistical Analysis and Historical Review* (Dec. 2008), <http://www.mackinac.org/10005>.
- 2 The Civic Federation, *Higher Tax Rates in Effect for Chicago Tobacco Consumers* (Jan. 2014), <http://www.civicfed.org/civic-federation/blog/higher-tax-rates-effect-chicago-tobacco-consumers>.
- 3 See, e.g., Michael F. Lovenheim, *How Far to the Border?: The Extent and Impact of Cross-Border Casual Cigarette Smuggling*, *National Tax Journal*, Vol. LXI, No. 1, (March 2008), [http://ntj.tax.org/wwtax/ntjrec.nsf/BF515771548F9D538525742E006CCBBA/\\$FILE/Article%2001-Lovenheim.pdf](http://ntj.tax.org/wwtax/ntjrec.nsf/BF515771548F9D538525742E006CCBBA/$FILE/Article%2001-Lovenheim.pdf); R. Morris Coats, *A Note on Estimating Cross Border Effects of State Cigarette Taxes*, *National Tax Journal*, Vol. 48, No. 4, (December 1995), pp. 573-84, [http://ntj.tax.org/wwtax/ntjrec.nsf/notesview/D7AF38C6EF8BF6D7852567EF0057A8C0/\\$file/v48n4573.pdf](http://ntj.tax.org/wwtax/ntjrec.nsf/notesview/D7AF38C6EF8BF6D7852567EF0057A8C0/$file/v48n4573.pdf); Mark Stehr, *Cigarette Tax Avoidance and Evasion*, *Journal of Health Economics*, Vol. 24, (2005), pp. 277-97, <http://legacy.library.ucsf.edu/documentStore/h/j/o/hjo10j00/Shjo10j00.pdf>.
- 4 Kevin C. Davis et al., *Cigarette Trafficking in Five Northeastern US Cities*, *Tobacco Control*, December 2013, <http://tobaccocontrol.bmj.com/content/early/2013/12/11/tobaccocontrol-2013-051244>.

Smuggling takes many forms: counterfeit state tax stamps, counterfeit versions of legitimate brands, hijacked trucks, or officials turning a blind eye.⁵ The study's authors, LaFaive and Nesbit, cite examples of a Maryland police officer running illicit cigarettes while on duty, a Virginia man hiring a contract killer over a cigarette smuggling dispute, and prison guards caught smuggling cigarettes into prisons. Policy responses have included banning common carrier delivery of cigarettes,⁶ greater law enforcement activity on interstate roads,⁷ differential tax rates near low-tax jurisdictions,⁸ and cracking down on tribal reservations that sell tax-free cigarettes.⁹ However, the underlying problem remains: high cigarette taxes that amount to a "price prohibition" of the product in many U.S. states.¹⁰

Cigarette Smuggling Rises with Excise Tax Rates

Cigarette Smuggling vs. State Cigarette Excise Tax Rate, 2013



Note: Positive smuggling percentages are inflow to a state; negative percentages are outflow.
Source: Mackinac Center for Public Policy; Tax Foundation.

- 5 See, e.g., Scott Drenkard, *Tobacco Taxation and Unintended Consequences: U.S. Senate Hearing on Tobacco Taxes Owed, Avoided, and Evaded*, TAX FOUNDATION, July 29, 2014, <http://taxfoundation.org/article/tobacco-taxation-and-unintended-consequences-us-senate-hearing-tobacco-taxes-owed-avoided-and-evaded>.
- 6 See, e.g., Curtis Dubay, *UPS Decision Unlikely to Stop Cigarette Smuggling*, TAX FOUNDATION TAX POLICY BLOG, Oct. 25, 2005, <http://taxfoundation.org/blog/ups-decision-unlikely-stop-cigarette-smuggling>.
- 7 See, e.g., Gary Fields, *States Go to War on Cigarette Smuggling*, WALL STREET JOURNAL, Jul. 20, 2009, <http://professional.wsj.com/article/SB124804682785163691.html?mg=reno64-wsj>.
- 8 See, e.g., Mark Robyn, *Border Zone Cigarette Taxation: Arkansas's Novel Solution to the Border Shopping Problem*, TAX FOUNDATION FISCAL FACT No. 168 (Apr. 9, 2009), <http://taxfoundation.org/article/border-zone-cigarette-taxation-arkansas-novel-solution-border-shopping-problem>.
- 9 See, e.g., Joseph Henchman, *New York Governor Signs Law to Tax Cigarettes Sold on Tribal Lands*, TAX FOUNDATION TAX POLICY BLOG, Dec. 16, 2008, <http://taxfoundation.org/blog/new-york-governor-signs-law-tax-cigarettes-sold-tribal-lands>.
- 10 See Patrick Fleener, *Tax Differentials on the Interstate Smuggling and Cross-Border Sales of Cigarettes in the United States*, TAX FOUNDATION BACKGROUND PAPER No. 16 (Oct. 1, 1996), <http://taxfoundation.org/article/tax-differentials-interstate-smuggling-and-cross-border-sales-cigarettes-united-states>.

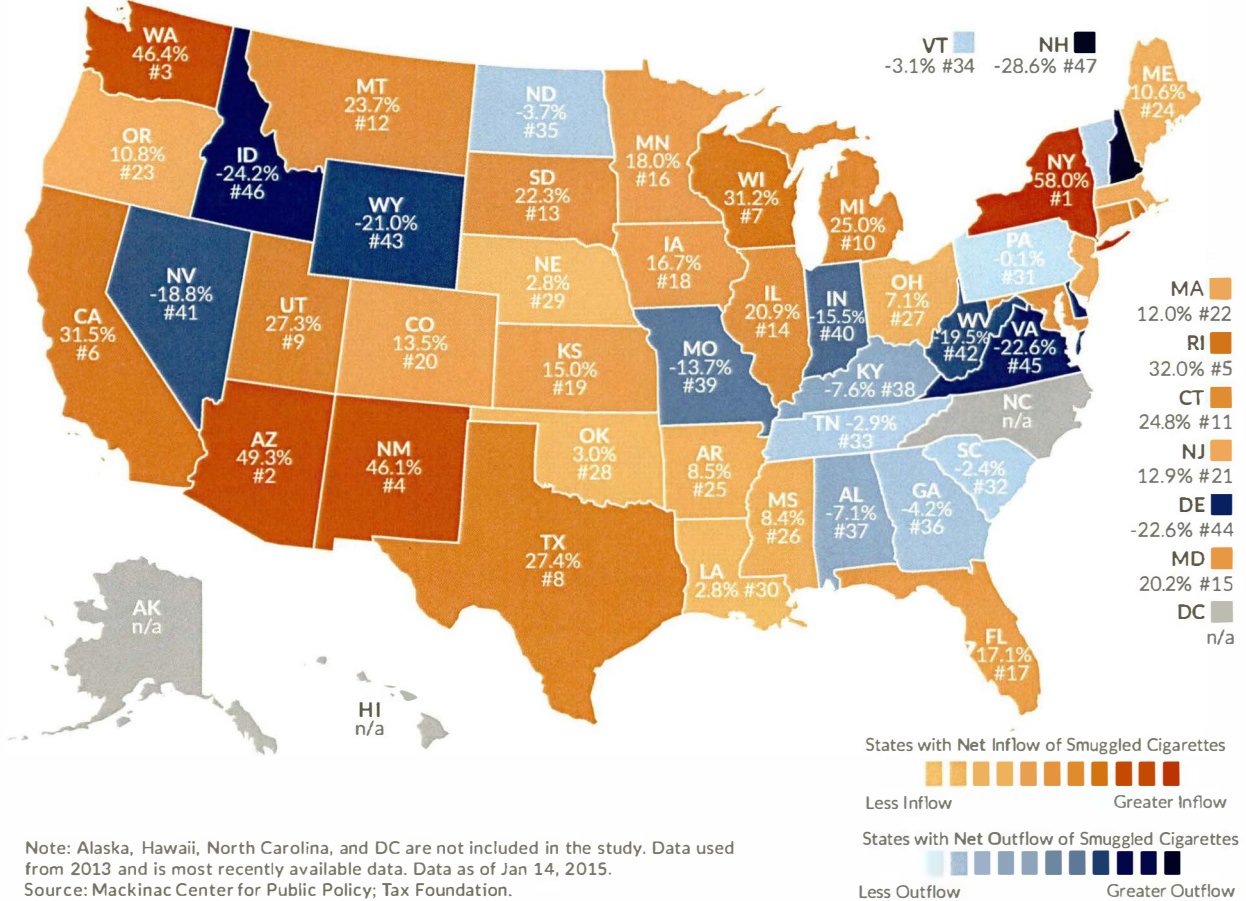
Table 1: 2013 Cigarette Tax Rates, Smuggling Percentages, and Changes Since 2006

	2013 Tax Rate (per pack)	2013 Consumption Smuggled (positive is inflow, negative is outflow)	2006 Consumption Smuggled (positive is inflow, negative is outflow)	2013 Smuggling Rank (1 is most smuggling, 50 least)	Smuggling Rank Change Since 2006 (e.g., NY changed from #5 to #1, so rank changed +4)	Cigarette Tax Rate Change, 2006-2013
New York	\$4.35	+58.0%	+35.8%	1	+4	+190%
Arizona	\$2.00	+49.3%	+32.1%	2	+5	+69%
Washington	\$3.025	+46.4%	+38.2%	3	+1	+49%
New Mexico	\$1.66	+46.1%	+39.9%	4	-2	+82%
Rhode Island	\$3.50	+32.0%	+43.2%	5	-4	+42%
California	\$0.87	+31.5%	+34.6%	6	+0	No Change
Wisconsin	\$2.52	+31.2%	+13.1%	7	+11	+227%
Texas	\$1.41	+27.4%	+14.8%	8	+8	+244%
Utah	\$1.70	+27.3%	+12.9%	9	+11	+145%
Michigan	\$2.00	+25.0%	+31.0%	10	-1	No Change
Connecticut	\$3.40	+24.8%	+12.3%	11	+11	+125%
Montana	\$1.70	+23.7%	+31.2%	12	-4	No Change
South Dakota	\$1.53	+22.3%	+5.3%	13	+15	+189%
Illinois	\$1.98	+20.9%	+13.7%	14	+3	+102%
Maryland	\$2.00	+20.2%	+10.4%	15	+9	+100%
Minnesota	\$1.60	+18.0%	+23.6%	16	-6	+1%
Florida	\$1.339	+17.1%	+6.9%	17	+9	+294%
Iowa	\$1.36	+16.7%	+2.4%	18	+15	+278%
Kansas	\$0.79	+15.0%	+18.4%	19	-7	No Change
Colorado	\$0.84	+13.5%	+16.6%	20	-6	No Change
New Jersey	\$2.70	+12.9%	+38.4%	21	-18	+13%
Massachusetts	\$2.51	+12.0%	+17.5%	22	-9	+66%
Oregon	\$1.18	+10.8%	+21.1%	23	-12	No Change
Maine	\$2.00	+10.6%	+16.6%	24	-9	No Change
Arkansas	\$1.15	+8.5%	+3.9%	25	+6	+95%
Mississippi	\$0.68	+8.4%	-1.7%	26	+11	+36%
Ohio	\$1.25	+7.1%	+13.1%	27	-8	No Change
Oklahoma	\$1.03	+3.0%	+9.6%	28	-3	No Change
Nebraska	\$0.64	+2.8%	+12.0%	29	-6	No Change
Louisiana	\$0.36	+2.8%	+6.4%	30	-3	No Change
Pennsylvania	\$1.60	-0.1%	+12.9%	31	-10	+19%
South Carolina	\$0.57	-2.4%	-8.1%	32	+9	+14%
Tennessee	\$0.62	-2.9%	-4.5%	33	+5	+210%
Vermont	\$2.62	-3.1%	+4.5%	34	-4	+46%
North Dakota	\$0.44	-3.7%	+3.0%	35	-3	No Change
Georgia	\$0.37	-4.2%	-0.3%	36	-1	No Change
Alabama	\$0.425	-7.1%	+0.5%	37	-3	No Change
Kentucky	\$0.60	-7.6%	-6.4%	38	+2	+100%
Missouri	\$0.17	-13.7%	-11.3%	39	+5	No Change
Indiana	\$0.995	-15.5%	-10.8%	40	+3	+79%
Nevada	\$0.80	-18.8%	+4.8%	41	-12	No Change
West Virginia	\$0.55	-19.5%	-8.4%	42	+0	No Change
Wyoming	\$0.60	-21.0%	-0.6%	43	-7	No Change
Delaware	\$1.60	-22.6%	-61.5%	44	+3	+191%
Virginia	\$0.30	-22.6%	-23.5%	45	+0	No Change
Idaho	\$0.57	-24.2%	-6.0%	46	-7	No Change
New Hampshire	\$1.68	-28.6%	-29.7%	47	-1	+110%
Alaska	\$2.00	N/A	N/A	N/A	N/A	+25%
Hawaii	\$3.20	N/A	N/A	N/A	N/A	+129%
North Carolina	\$0.45	N/A	N/A	N/A	N/A	+50%
District of Columbia	\$2.50	N/A	N/A	N/A	N/A	+150%

Source: Mackinac Center for Public Policy; Tax Foundation.

Cigarette Smuggling by State

Smuggled cigarettes consumed as a percentage of total cigarettes consumed, 2013



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