September 26, 2019

An Open Letter to Members of Congress: Oppose Higher Taxes on Cigarettes and Tobacco Harm Reduction Products

Dear Member of Congress:

On behalf of National Taxpayers Union, the nation's oldest taxpayer advocacy organization, I write to express our strong opposition to HR 4425, the Quell Underage Inhaling of Toxic Substances (QUITS) Act. As written, this legislation represents a significant tax increase on millions of American consumers, and is simply another blatant example of politicians attempting to manipulate consumer behavior through the federal tax code. We urge you to stand with taxpayers, consumers and small businesses against this poorly crafted legislation.

NTU has a long history of advocating against policies that would have an adverse effect on our economy or America's taxpayers. To that end, the government's distortion of the tobacco and nicotine market is one such area where we engage often, particularly at the state and local level. In our fifty years of experience, we have seen first-hand how regressive taxation of consumer "sin" products can have significant consequences on all stakeholders far beyond just the buyers of nicotine.

Many provisions of this bill include misguided tax increases and would likely cause significant harm to our domestic economy. Tax increases weaken economic growth by suppressing consumer spending, straining household budgets, and curbing retailer sales. Instead of promoting policies that would further burden some of the most heavily taxed consumers, lawmakers should focus on permanently extending the Tax Cuts and Jobs Act or promoting other forms of tax relief.

As such, NTU implores lawmakers to keep these following points in mind as you determine if this legislation will benefit your constituents.

Tax Increase on Vapor Products Flies in the Face of Science:

Despite e-cigarette and vapor products being significantly less harmful than traditional tobacco, H.R. 4425 would subject these products to the same tax rate as cigarettes. Unlike traditional tobacco products, vapor products and e-cigarettes deliver nicotine without releasing thousands of harmful chemicals. These products also contain no tobacco, which is precisely why e-cigarettes should not be subjected to the same level of taxation as cigarettes, cigars, or any other type of smokeless tobacco. While that doesn't necessarily mean vapor and other nicotine delivery devices are entirely safe, the tax that is applied should reflect the appropriate level of risk - which is far less than that of cigarettes.

Additionally, the e-vapor market also remains in its infancy and is still extremely small compared to the overall tobacco market. It would be misguided to rush to action that could stifle innovation and suppress adult consumer interest in reduced-risk products.

Many are concerned about the prevalence of vaping in our society, but scientific literature is coalescing around the fact that vaping is significantly less harmful than traditional combustible cigarettes. A recent study shows vaping can reduce the harm associated with smoking by as much as 95 percent, and can be as much as twice as effective as gum or patches to help users quit. It is growing ever clearer that vapor products are an innovative and effective bridge for smokers transitioning toward significantly less harmful alternatives. For years, government officials have taken steps to reduce the prevalence of tobacco usage, and the free market has produced a solution to address this serious problem.

The FDA also recognizes that these new products are less harmful than combustible cigarettes and considered to be tobacco harm reduction (THR), based on a reasonable premise that there are significant benefits (for individual health, government health care programs, and the economy) to providing smokers with innovative alternative means of getting the nicotine they desire. It is therefore ill-advised to limit access to less risky alternatives for consumers attempting to kick their cigarette habit.

Hurts Small Businesses and Low-income Consumers

The proposed tobacco tax hikes would also harm small businesses. The National Association of Convenience Stores notes tobacco as the top revenue generator for these businesses, accounting for more than one-third of in-store sales nationwide. With some consumers moving their purchases to the black market or no longer buying tobacco altogether, it will ultimately result in less revenue. Worse yet, a decline in tobacco sales typically translates into a decline in foot traffic, which leads to a decline in other sale items. If mom and pop stores lose sales, they either have to raise prices on their products, which is paid for by all consumers or make the tough decision to lay off employees or cut the hours of their low-wage employees.

In a time when small brick and mortar stores are being squeezed more than ever, small businesses and their employees do not deserve this unnecessary financial hit.

Consumers would also be hit with a price increase, but those on the lower end of the income scale would be burdened disproportionately compared to those with higher incomes, making this a regressive tax. Both the CBO and CRS have identified the cigarette excise tax as a regressive tax, with the CRS noting it as “probably the most regressive of the federal taxes.” So while all consumers of cigarettes would have to pay a higher tax rate, it would fall hardest on the most vulnerable of our society.

Cigarette Tax Hikes Rarely Meet Revenue Estimates

While the Joint Committee on Taxation has yet to release an official revenue estimate, it is likely the annual increase could total in the tens of billions - which would be one of the largest tax increases passed by the House this decade. Since the current excise tax rate is levied at $1 per pack of cigarettes, and generates close to $13 billion to the federal government’s coffers, an increase to $3 per pack would likely be projected to raise around $20 billion annually, with some demand dropping to elasticity. Additionally, a 2013 study by NTU’s research arm, National Taxpayers Union Foundation, found that revenue projections were met in only 29 of 101 cases where tobacco-related taxes were raised between 2001 and 2011.

Lost revenue isn't the only consequence of high tobacco taxes. By raising taxes, policymakers fund a growing black market for cigarettes. Smokers eager to find cheaper alternatives can easily find illegal cigarettes. Not only are cartons of cigarettes readily available on the internet, gas stations and drug stores are also selling them. The demand for cheaper cigarettes and profit potential is substantial enough for even legitimate store owners to sell illegal products alongside the real thing. Since tax isn't collected on cigarettes on the black market, all levels of government will lose out on revenue that they would have otherwise collected if the tax rate was lower.

Flavor Bans Hurt Adult Smokers

In addition to the myriad of tax increases, H.R. 4425 also reduces consumer choice by banning flavored e-cigarettes and other flavored tobacco products. In their attempts to kick their deadly tobacco habit, adult tobacco smokers typically start with tobacco flavored e-liquid, but research indicates many end up switching to more fruity or sweet flavors. Cracking down on the ability for legal-age buyers of flavored e-cigarettes will limit access to less harmful alternatives that could potentially save hundreds of thousands of lives each year. As is the case with most top-down blanket prohibitions, they are seldom successful and often lead consumers to turn to untaxed and unregulated black markets to access products.

Due to the many problems with H.R. 4425, NTU strongly believes this proposal would harm consumers in all corners of the country far more than it would help them. Accordingly, we encourage you to oppose this bill and instead work toward a more fiscally responsible future for American taxpayers and consumers.

Sincerely,

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