



December 19, 2024

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Closing Enforcement Loopholes and Shifting E-Cigarette Tax to Wholesale Level in the SFY 2025-26 Executive Budget to End the Youth E-cigarettes Epidemic in New York State

Dear Governor Hochul:

The undersigned organizations representing public health, health equity, parents and youth, educators and health care providers across New York State respectfully **urge you to provide stronger enforcement tools for Department of Health related to New York State’s flavored e-cigarette ban and shift New York’s e-cigarette tax to the wholesale level in your SFY 2025-26 Executive Budget.** There are several issues causing the law enacted in 2020 to not have the intended impact and we believe it is necessary to address these through a multi-pronged approach to reduce high youth tobacco use rates and their adverse effects on New York’s communities.

New York State (NYS) passed landmark legislation within the 2020-21 budget to ban flavored vaping products and address the epidemic of e-cigarette use among youth. Unfortunately, some loopholes exist which have caused challenges to effective enforcement. For instance, language in the current law allows retailers to deny inspectors access to their stores, distributors to continue to sell prohibited products to NY merchants, and retailers to claim they are selling products remotely. Also, an exemption was included for products that receive a “Pre-Market Tobacco Product Authorization” (PMTA) from the Food and Drug Administration (FDA).

Our organizations have been advocating for legislation ([A9110, Rosenthal/ S8531, Hoylman-Sigal](#)) that would close many of these loopholes by several means including prohibiting distributors from sending illegal flavored vape products into NYS, suspending a tobacco retailer’s certificate of registration for illegal vape sales, creating a civil penalty if a tobacco retailer refuses to make their premises available to an authorized health inspector, and more. This bill language is strongly based on your proposal in the SFY 2023-24 Executive Budget with a couple necessary additions.

Further, as shown below, currently in NYS and uniquely compared to other states, vaping products are taxed at the retail level. This is inconsistent with NY tax policy as all other tobacco products are taxed at the wholesale level in NYS. With there being nearly 17,000 registered tobacco/vape retailers in NYS, tax enforcement has been particularly challenging and we believe this structure has greatly contributed to continued illicit flavored vape sales and sales of other vaping products untaxed.

Product	State Tax Rate	Who Tax Is Paid By	Collected By
Cigarettes	\$5.35 per pack (20 cigarettes)	Wholesale distributor	NYS Department of Taxation and Finance
Cigars and Chewing Tobacco	75% of wholesale price	Wholesale distributor	NYS Department of Taxation and Finance
Snuff	\$2 per ounce or fraction thereof	Wholesale distributor	NYS Department of Taxation and Finance
Little Cigars	\$5.35 per 20 little cigars (26.75 cents each)	Wholesale distributor	NYS Department of Taxation and Finance
Vapor Product	20% of retail price	Vapor product retail dealer	NYS Department of Taxation and Finance

According to CDC Foundation data, New York continues to have the highest continued availability of illegal flavored e-cigarette products in retail outlets, as compared to other states with similar laws. We believe these tax and enforcement loopholes are to the blame and they urgently need closing. Strengthening enforcement abilities of local health departments and aligning the e-cigarette tax with all other tobacco product taxes to require tax collection at the wholesale level will critically help to address the widespread evasion of NYS' flavored vape products ban.

These loopholes must be removed quickly as tobacco manufacturers continue to make e-cigarettes stronger and more appealing to young people with fun flavors, enticing packaging, and deceptive messaging. Further, recent research and surveys show concerning data. The 2024 [National Youth Tobacco Survey](#) showed that more than 1 in 4 (26%) of current youth e-cigarette users use an e-cigarette daily which is recognized as a sign of serious addiction. And almost all of the students report exclusively using flavored e-cigarettes – one [study](#) found that 71 percent of survey participants between the ages of 14 and 21 would quit if they did not have flavor choices.

Effective enforcement of New York's law can help put a stop to the tobacco industry taking advantage of our youth and protect them from a lifetime of addiction. This is imperative as a survey conducted by Roswell Park Comprehensive Cancer Center for the [NYS Quitline](#) released this month found that **64 percent of New York healthcare professionals believe youth and young adults are facing a vaping epidemic and are concerned about nicotine addiction among younger generations.**

We must act now to support educators, parents, youth, and our communities facing the current e-cigarette crisis. By closing loopholes from the 2020 law, we can ensure New York's laws are effectively enforced and put an end to continued access to and promotion of flavored tobacco products. We are asking you to include these policies in your SFY 2025-26 Executive Budget, utilizing language from the above-mentioned legislation similar to your proposal in the SFY 2023-24 Executive Budget, while adding the measure to shift the e-cigarette tax collection structure to the wholesale level.

Please protect our state's young people and future generations from the tobacco industry's harmful strategies and deadly products.

Respectfully,

Action on Smoking and Health

African American Tobacco Control Leadership Council

American Heart Association

American Lung Association

American Nurses Association - New York

Campaign for Tobacco-Free Kids

Healthcare Association of New York State

March of Dimes

Medical Society of the State of New York

NAACP New York State Conference

New York Chapter American College of Physicians Services
New York School-Based Health Alliance
New York State Academy of Family Physicians
New York State Association of County Health Officials
New York State Parent Teacher Association
New York State School Boards Association
New York State Society of Anesthesiologists
Pharmacists Society of New York State
Stan Martin Consulting

CC: Blake Washington, Director, New York State Division of Budget

Dr. James McDonald, Commissioner, New York State Department of Health