



**PUBLIC HEALTH, PROVIDER, EDUCATION & HEALTH EQUITY GROUPS
URGE INCLUSION OF ALTERNATIVE NICOTINE PRODUCT TAX AND
NYS TAX DEPARTMENT ENFORCEMENT OF VAPOR PRODUCT LAWS
IN STATE BUDGET**

Need for Excise Tax on Alternative Nicotine Products

The above-listed organizations strongly support Part K of the Revenue Article VII budget bill (S9009A/A10009A), which would close New York’s tax loophole on alternative nicotine products and align it with existing taxes on tobacco products. Part K would expand the tobacco products excise tax in Tax Law Article 20 to include alternative nicotine products, such as nicotine pouches like Zyn, to be taxed at 75% of the wholesale price, as tobacco products currently are. With nicotine pouch use having doubled among New York high schoolers since 2022 and tobacco companies aggressively marketing these easy-to-conceal and highly addictive products to young people, we applaud Governor Hochul for taking action to prevent youth use. Further, according to the State Division of the Budget, monies generated from the excise tax will go to Medicaid which provides free smoking cessation counseling and medications to help individuals end tobacco use and nicotine addiction.

State lawmakers must see through false arguments by the tobacco industry and business groups that profit from the sale of these products and claim these flavored products aid in smoking cessation. **Nicotine is not safe in any form for youth, and there is no evidence that nicotine pouches help smokers quit – though it is abundantly clear they create a clear pathway to nicotine addiction, especially for our young people.** Alternative nicotine products are regulated as “tobacco products” by the FDA and should be taxed just like other tobacco products. To be clear, the FDA has a separate process for nicotine replacement products to be approved as cessation devices. Alternative nicotine products have not gone through this process and are not cessation devices (nor is the industry permitted to claim they are). We urge this measure be included in the SFY 2027 One House Budgets and the Final State Budget to close the tax loophole for these addictive products, ensure equal treatment across all tobacco products, and protect youth from a lifelong nicotine addiction due to the current appeal of these cheap, untaxed, flavored products.

Need for NYS Tax Department Enforcement of Vapor Product Laws

Following enactment of the 2020 law prohibiting the sale of flavored vapes in NYS, there has been rampant evasion by retailers across the state who continue to sell illegal products in violation of the law. In fact, over a third of e-cigarette sales in New York are illegal flavored products. We commend the Governor for proposing to address this ongoing issue in the Executive Budget (Part L of S9009A/A10009A). This section of the budget would add a distributor tax on vapor products at 55 cents per unit and authorize the Tax Department to enforce the tax and underlying laws. It would also create a registry of vapor products that may legally be sold in the state. However, this section must be amended to ensure that only products that have received “Pre-Market Tobacco Product Authorization” from the Food and Drug Administration (FDA) are included on the list. The current language as written would permit the sale of thousands of vapor products that have submitted a PMTA application but have not completed FDA’s scientific review or are continuing to litigate a MDO (Marketing Denial Order) issued for the product.

Providing greater authority and clarity to the State Tax Department to enforce the existing flavored vapor products law and tax collection are critical to enhance the ability of the state to crack down on retailer evasion and keep these harmful products out of the hands of our middle and high schoolers. The Executive Budget proposal is similar to pending legislation that would shift the vapor products tax to the wholesale level (S4527-A, Comrie/ A4619-A, Solages), which we also support. However, to preserve the value of the current tax (20% of the retail price), the new rate should be set at 48% of the wholesale price.

We strongly support these measures and urge their inclusion in the Final State Budget to prevent youth access to these highly addictive products being promoted by Big Tobacco.