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Before the Joint Legislative Fiscal Committees,
on FY 2027 New York State Executive Budget Revenue Article VII Legislation,
part K
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Context

Part K of the Executive Budget introduces taxation of alternative nicotine products, defined as *“any noncombustible product, other than vapor products, that contains nicotine but not tobacco and is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.”*

Notably, the definition of alternative nicotine products does not include vapes (vapor products), which are taxed separately. Alternative nicotine products are included in the definition of *“tobacco products”* and therefore would be taxed at 75 percent of the wholesale price.

After examining the proposal, we identified three important factors to consider:

1. A 75 percent tax on alternative nicotine products would be among the highest in the country.
2. A 75 percent tax on alternative nicotine products would be higher than in some neighboring states, creating incentives for consumers to purchase these products outside of New York, thereby depriving the state of tax revenue.
3. While some states tax Modified Risk Tobacco Products at a reduced rate, the proposed definition would likely classify these products as alternative nicotine products and subject them to the same tax rate.

A 75 percent tax rate is high

There are variations in how each state defines alternative tobacco products, which makes precise comparisons across states complicated. Nevertheless, even taking these limitations into account, based on data provided by the National Conference of State Legislatures¹ or Campaign for Tobacco-Free Kids², New York’s proposed tax rate of 75 percent on alternative nicotine products would be among the highest in the country.

¹ *It Pays to Sin: Cigarettes, Tobacco, and Nicotine*, National Conference of State Legislatures, retrieved at <https://www.ncsl.org/fiscal/it-pays-to-sin-cigarettes-tobacco-and-nicotine>

² *State Excise Tax Rates for Non-Cigarette Tobacco Products*, Campaign for Tobacco-Free Kids, retrieved at <https://assets.tobaccofreekids.org/factsheets/0169.pdf>

Tax rates significantly higher than in neighboring states could encourage cross-border purchases and reduce expected revenue

With a 75 percent tax on alternative nicotine products, New York's tax rate would be significantly higher than those in some neighboring states, such as New Jersey, which imposes a 30 percent tax, and Pennsylvania, which imposes a 40 percent tax.

Given the proximity of major population centers (e.g., New York City) to jurisdictions with substantially lower tax rates (e.g., New Jersey), the incentive to purchase alternative nicotine products outside of New York would increase significantly. This could lead New Yorkers to purchase these products in neighboring states, diminishing retail activity in New York and resulting in a significant loss of projected tax revenue.

This situation is already observed in the cigarette market. The Tax Foundation estimates that, due to the high taxes imposed by New York State and New York City, more than half of the cigarettes consumed in New York are smuggled into the state, resulting in an estimated revenue loss of \$800 million.³

Similarly, the WSPM Group's 2024 Empty Pack Survey conducted in New York found that 99 percent of discarded vapes (vapor products) were of the flavored variety⁴, indicating that consumers have a high propensity and ability to circumvent New York's restrictions on flavored tobacco products.

Modified Risk Tobacco Products would be taxed at a high rate of 75 percent

The proposed definition of alternative nicotine products would likely include Modified Risk Tobacco Products (MRTPs), as defined by the U.S. Food and Drug Administration (FDA), such as heated tobacco products and others.

As FDA notes *"MRTP application generally must demonstrate that the product will significantly reduce harm and the risk of tobacco-related disease to individual tobacco users and benefit the health of the population as a whole."*

Based on Food and Drug Administration (FDA) data, FDA has issued or is the process on renewing MRTP status for ZYN, IQOS 2.4 Marlboro Amber, Green Menthol and Blue Menthol Heat Sticks, VLN King, VLN Menthol King, Copenhagen Classic Snuff, General Snus products⁵.

Colorado, for example, differentiates alternative nicotine products from modified risk tobacco products, imposing a 56% tax on alternative tobacco products, but only charging 38% on MRTPs (56% and 28% for nicotine products and Modified Risk Nicotine Products respectively). Similarly, in Connecticut the tobacco products tax is reduced by 50% for modified risk tobacco products⁶.

³ *Compare Tobacco Tax Data in Your State*, Tax Foundation, retrieved from <https://taxfoundation.org/data/all/state/tobacco-tax-data-tool/>

⁴ *WSPM Group Empty Packs Survey USA-NY Q1 2024*, WSPM Group, retrieved from: <https://www.politico.com/f/?id=0000018f-9812-d62d-ab9f-9936580a0000>

⁵ Modified Risk Tobacco Products, U.S. Food and Drug Administration, retrieved from <https://www.fda.gov/tobacco-products/advertising-and-promotion/modified-risk-tobacco-products>

⁶ Connecticut State Department of Revenue Services, retrieved from <https://portal.ct.gov/drs/taxes/tobacco-products/tax-information>