

February 17, 2021

Written Testimony of
Ashlie Kuehn, State Government Affairs
Juul Labs
concerning
H.F. 991
Before the House Committee on Taxes
Minnesota House of Representatives

Chair Marquart, Vice Chair Lislegard, and Members of the Committee,

On behalf of Juul Labs, Inc. (“JLI”), thank you for the opportunity to submit testimony regarding H.F. 991. We oppose the provision in Article 2 of H.F. 991 that would establish a new tax equal to 35 percent of gross receipts from retail sales of nicotine solution products, in addition to the existing 95 percent wholesale tax and sales tax, potentially resulting in three state taxes on one legal, consumer, adult-restricted product.

As JLI strives to reset our company and category in the U.S., we are focused on listening and building constructive relationships with regulators, policymakers, and other stakeholders to advance the harm reduction potential for adult smokers. One of the key tenets of these efforts is our commitment to combat underage use of our products through evidence-based interventions.

JLI also supports risk-proportionate regulation for vapor and other reduced-risk, noncombustible products. Such a policy framework, at its core, applies the most stringent regulations to the riskiest products (e.g., combustible cigarettes) and encourages current adult users to migrate to potentially less harmful alternatives (e.g., vapor products). To be clear, risk-proportionate regulation does not mean a “lenient” approach to noncombustible alternatives. It certainly does not mean an unregulated marketplace. Rather, it means a robust, informed regulation of tobacco and nicotine products and our category will always be appropriate.

The regulatory balance should be weighted in favor of harm reduction. That is, to establish public policy that moves adult smokers away from the most harmful tobacco and nicotine products (e.g., combustibles) towards potentially less harmful noncombustible alternatives - all while combating access to and use of these products by those underage.

Imposing an additional gross receipts tax on vapor products on top of the existing 95 percent wholesale tax, one of the highest in the nation, risks hindering the harm-reduction potential of these products for adult smokers who may continue smoking or former smokers who may return to combustible cigarettes.

For these reasons and those stated in more detail below, we respectfully request that the additional gross receipts tax on nicotine solution products be removed from this legislation, and the Committee instead engage

with stakeholders to develop a thoughtful, risk-proportionate regulatory framework for all tobacco and nicotine products.

Excise Taxation and Vapor Products

Tax policies should be risk-proportionate to accelerate adult smokers switching away from cigarettes, the number one cause of preventable death, to potentially less-harmful noncombustible alternatives.

H.F. 991 would impose a substantial new tax on vapor products. The new gross receipts tax would be applied to the total amount received for all nicotine solution product and heat device sales at retail as measured by the sales price, not including “taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.”¹ The existing wholesale tax on vapor products is levied on the distributor, and does not meet above criteria for exclusion. As such, the new 35 percent gross receipts tax would be applied to a sales price that already factors in the 95 percent wholesale tax. In effect, the same vapor product would be taxed multiple times at different stages.

This combination of excise taxes would levy substantially higher excise taxes on vapor products than on combustible cigarettes, diminishing the harm-reduction potential of these products for adult smokers and leading to other adverse consequences.

For former and current smokers, vapor products and cigarettes are competing alternatives in the marketplace, and high excise taxes on vapor products risk pushing current adult vapers back to combustible cigarettes and discouraging current smokers from switching. A recent study in the *Journal of Risk and Uncertainty* estimated that current excise tax in Minnesota increased adult smoking, deterring 32,400 adult smokers in the state from transitioning away from cigarettes.² Raising excise taxes on vapor products even further, to the point that the state would tax vapor products more than combustible cigarettes, would lead to increased or sustained smoking of combustible cigarettes in Minnesota.

In response to the additional tax imposed by H.F. 991, some adult consumers may purchase vapor products through the illicit market, which predominantly occur outside of tax regulation. A more prominent illicit market can potentially present additional health and safety risks for adult consumers and undermine underage-prevention measures. Other adults may shift to purchasing cheaper vapor products out-of-state, especially in this case where Minnesota would have the highest taxes on vapor products in the country, and surrounding states either have no excise taxes or impose a reasonable excise tax on vapor products.³ This shift to out-of-state purchases would cause responsible retailers in Minnesota to lose business and reduce expected revenue for the state.

¹ H.F. 991.28.26

² Saffer, H. et al. E-cigarettes and adult smoking: Evidence from Minnesota. *J Risk Uncertain* 60, 207–228 (2020).
<https://doi.org/10.1007/s11166-020-09326-5>.

³ Federation of Tax Administrators, “State Taxes on E-cigarettes/Vaping Products,”
<https://www.taxadmin.org/assets/docs/Research/Rates/e-cigarettes.pdf>

Conclusion

We are concerned that the provision of H.F. 991 imposing an excessive, additional gross receipts tax on vapor products would lead to adverse consequences in Minnesota while being an ineffective way to attempt to address underage use. We respectfully request that the Committee strike this third level of taxation on vapor products in the proposed legislation and engage with stakeholders to develop a thoughtful, evidence-based regulatory approach that maintains access to potentially less harmful alternatives for adult smokers and addresses underage use through tailored measures to restrict access and limit appeal.

Sincerely,

Ashlie Kuehn