



NATO

November 10, 2020

Chair Sharon Green Middleton
Members of the Taxation, Finance, and Economic Development Committee
100 Holliday Street
Baltimore, MD. 21202

RE: Proposed Electronic Smoking Tax

Dear Chair Middleton and Committee Members:

As the Executive Director of the National Association of Tobacco Outlets (NATO), a national retail trade association that represents more than 60,000 retail stores throughout the country including many Baltimore retail store members, I am writing regarding the proposed tax on electronic smoking devices at 30% percent of the wholesale price. NATO's members are very concerned with the impact of such a tax, particularly at a time when retailers are desperately trying to survive this unprecedented pandemic. We respectfully ask that you not adopt a tax at all, but if the city council proceeds to do so, that the council please consider either assessing a 15-cents per milliliter tax on vaping liquid nicotine solutions in place of the 30% tax on electronic smoking devices, or applying the 30% tax only on the liquid nicotine solution rather than the entire electronic smoking device.

The Council Needs to Consider All the Facts: We assume you are trying to reduce underage use of electronic smoking devices, a concern NATO and its members share, but ask that you consider:

- The U.S. Food and Drug Administration published a Guidance in February 2020 banning the sale of flavored electronic cigarettes that have a removable cartridge or pod, the type most used by underage individuals.
- Manufacturers were required to file Pre-Market Tobacco Applications with the FDA by September 9, 2020 for virtually all electronic cigarette products. If a manufacturer did not timely file an application, their products were unlawful to sell prohibited and required to be removed from retailer shelves. This means that many electronic cigarette products can no longer be sold because of this deadline.

Pandemic Impact and Economic Crisis Will Be Magnified by Additional Tobacco Taxes: During the current emergency caused by the Coronavirus, now is not the appropriate time for a local government to consider burdensome taxes on retailers and their customers. According to our convenience store and service station members, they have experienced a loss of 45% in gasoline sales and up to 20% or more in grocery, snack, beverage, and tobacco product sales. These declines are

significant because the average convenience store relies on tobacco product sales for approximately 36% of in-store sales.

The result of a high tax could be losses far greater than the current combined 65% declines in gasoline and other product sales. These retailers have done everything possible to survive the pandemic, but they will not survive confiscatory taxes on this segment of their customer base. Employee layoffs and store closures are certainly possible; with each closure leaving a void in the public's need for retailers that sell gas, food, and beverages.

A Tax Will Force Sales Outside the City and to Illicit Markets: These new taxes will shift sales from Baltimore's responsible retailers to stores in adjacent cities resulting in the City of Baltimore not collecting excise taxes or sales taxes on the sale of electronic smoking devices. In addition, adult consumers will seek out other sources for their preferred electronic nicotine products including illicit sellers or over the Internet to avoid paying Baltimore's taxes. When they do this, they will also not buy from Baltimore retailers those other products that consumers typically buy such as gasoline, groceries, and other sundry items. The net effect will be a reduction in sales at Baltimore stores.

The Council Should Consider a Per Milliliter Tax: Jurisdictions surrounding Baltimore have adopted taxes on liquid nicotine solutions as opposed to a percentage of the wholesale price. For example, the States of Delaware and North Carolina assess a tax of 5-cents per milliliter of liquid nicotine solution, West Virginia assesses a 7.5-cents per milliliter, and New Jersey adopted a 10-cents per milliliter tax on liquid nicotine solutions.

NATO and its Baltimore retail members share everyone's interest in keeping tobacco products out of the hands of persons under 21, but imposing taxes on all electronic smoking devices for 21 and over adults is not sensible public health policy. As explained above, NATO and its members recommend a 15-cents per milliliter tax on the liquid nicotine solution, not a tax on the electronic smoking device itself. A draft of an amendment to change the tax rate to 15-cents per milliliter of liquid nicotine solution accompanies this letter. This alternative of assessing a per milliliter tax would strike a balance that would preserve retail sales and allow the City of Baltimore to collect additional tax revenue.

Another option is for the city council to consider applying the 30% tax rate to the liquid nicotine solution and not the electronic smoking device. Traditional pipes are not subject to a state or local excise tax, rather just the pipe tobacco is taxed. Similarly, electronic smoking devices themselves should not be subject to an excise tax.

Thank you for the opportunity to provide comments on the proposed tax.

Sincerely,

Thomas A. Briant

NATO Executive Director

Cc: Baltimore City Council Members

Exhibit

Amendment to Council Bill 20-0631

§ 27-1. DEFINITIONS.

(E) ELECTRONIC SMOKING DEVICES.

(1) IN GENERAL.

“ELECTRONIC SMOKING DEVICE” MEANS A DEVICE THAT CAN BE USED TO DELIVER AEROSOLIZED OR VAPORIZED **LIQUID** NICOTINE **SOLUTION** TO AN INDIVIDUAL INHALING FROM THE DEVICE.

“LIQUID NICOTINE SOLUTION” MEANS ANY LIQUOR OR OTHER SUBSTANCE CONTAINING NICOTINE IN ANY CONCENTRATION THAT IS SOLD, MARKETED, OR INTENDE FOR USE IN AN ELECTRONIC SMOKING DEVICE.”

(2) INCLUSIONS.

“ELECTRONIC SMOKING DEVICE” INCLUDES:

- (I) AN ELECTRONIC CIGARETTE, AN ELECTRONIC CIGAR, AN ELECTRONIC CIGARILLO, AN ELECTRONIC PIPE, AN ELECTRONIC HOOKAH, A VAPE PEN, AND VAPING LIQUID **NICOTINE SOLUTION**; AND
- (II) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, ANY COMPONENT, PART, OR ACCESSORY OF AN ELECTRONIC SMOKING DEVICE REGARDLESS OF WHETHER OR NOT IT IS SOLD SEPARATELY, INCLUDING ANY SUBSTANCE INTENDED TO BE AEROSOLIZED OR VAPORIZED DURING USE OF THE DEVICE.

§ 27-2. TAX IMPOSED.

AN EXCISE TAX IS LEVIED AND IMPOSED ON EVERY DISTRIBUTOR WHO SUPPLIES AN ELECTRONIC SMOKING DEVICE **THAT CONTAINS A LIQUID NICOTINE SOLUTION** TO A DEALER WITHIN THE CITY.

§ 27-3. AMOUNT OF TAX.

THE AMOUNT OF THE EXCISE TAX IS 15 CENTS PER MILLILITER OF LIQUID NICOTINE SOLUTION, AND A LIKE RATE ON ALL FRACTIONAL PARTS OF A MILLILITER, IS LEVIED ON LIQUID NICOTINE SOLUTION BROUGHT INTO THE MUNICIPALITY. THE LIQUID NICOTINE SOLUTION UPON WHICH THIS TAX IS IMPOSED IS NOT AGAIN SUBJECT TO THIS TAX WHEN ACQUIRED BY ANOTHER PERSON.