

September 14, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-232, The Capitol
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, D.C. 20515

The Honorable Richard Neal
Chairman
House Committee on Ways & Means
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable Kevin Brady
Ranking Member
House Committee on Ways & Means
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Speaker Pelosi, Minority Leader McCarthy, Chairman Neal and Ranking Member Brady:

Our associations represent retailers responsibly selling tobacco across the country and we are writing to express our opposition to the substantial increase in the federal excise tax on tobacco and nicotine products that is proposed in the reconciliation package.

As tobacco retailers, our members have invested millions to ensure they are in full compliance with federal, state and local laws. This includes training employees in proper age verification protocols and in how to store and safely stock the product and investing in signage, and in many cases, advanced technology. In addition, these retailers collect and remit the appropriate taxes on these products.

While proponents of increasing the federal excise tax intend for it to ultimately dissuade users of tobacco products and provide additional revenue, an increase of such substantial proportion will have the opposite effect of what is intended. Instead, it will push many current users to the illicit tobacco market.

According to a report from the Virginia State Crime Commission, “All cigarette trafficking schemes, no matter the methods employed, depend upon tax avoidance” as “illegally trafficked cigarettes now have a higher profit margin than cocaine, heroin, marijuana or guns.”¹ In fact, the National Research Council reported that U.S. cigarette smuggling is a multibillion-dollar business fed by “large tax differentials between jurisdictions.”² The findings showed \$3-7 billion lost in state tax revenues and a loss of annual sales between 8.5 to 21 percent.³ A study in

¹ Virginia State Crime Commission. 2012. *SJR 21: Illegal Cigarette Trafficking*. [online] Available at: <http://services.dlas.virginia.gov/User_db/frmvsc.asp?ViewId=3160> [Accessed 13 September 2021].

² National Research Council. 2015. *Understanding the U.S. Illicit Tobacco Market: Characteristics, Policy Context, and Lessons from International Experiences*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/19016>.

³ Id.

Tobacco Control found one in five packs of cigarettes is smuggled “with rates higher in states with higher-excise taxes.”⁴

In the illicit market, sellers operate completely outside of the law offering unregulated products to users of all ages. This negates the health protections that Congress intended when it passed the Tobacco Control Act in 2009, giving the Food & Drug Administration (FDA) regulatory authority over the manufacturing and sale of tobacco products. These regulated products go through intense scrutiny to be on the market and tobacco retailers must comply with legal age requirements among other protocols in order to sell the products in their stores. In recent years, FDA has seen a rise in counterfeit products entering the country. In January, the agency announced that in coordination with U.S. Customs and Border Protection officers it had seized more than 33,000 units of counterfeit e-cigarettes at a value of \$719,453 coming across the border.⁵

“Many counterfeit, unapproved or unauthorized products are likely produced in unregulated facilities with unverified ingredients posing a serious health concern to consumers. It is especially alarming when these types of counterfeit and unauthorized products find their way into the hands of children as studies indicate,” said CBP Port Director Timothy Lemaux.⁶

When the price of a product rises too much too fast, illicit purveyors will seize the opportunity to exploit and take advantage of current users and entice new users without discriminating based on age. This undermines the responsible measures our retailers have taken and creates a problem for society as a whole.

For these reasons, our associations ask you to oppose the substantial increase in the federal excise tax on tobacco and nicotine products in the current reconciliation legislation.

Respectfully,

Energy Marketers of America
National Association of Convenience Stores
National Association of Truckstop Operators
Society of Independent Gasoline Marketers of America

cc: Members of the House Committee on Ways & Means

⁴ Brian V Fix, Andrew Hyland, Richard J O’Connor, K Michael Cummings, Geoffrey T Fong, Frank J Chaloupka, Andrea S Licht, 2012. A novel approach to estimating the prevalence of untaxed cigarettes in the USA: findings from the 2009 and 2010 international tobacco control surveys. *Tobacco Journal*, [online] Available at: <<https://perma.cc/RUP8-4PJ8>> [Accessed 13 September 2021].

⁵ Food & Drug Administration, 2021. *CBP, FDA Seize Counterfeit, Unauthorized E-Cigarettes*. [online] Available at: <<https://www.fda.gov/news-events/press-announcements/cbp-fda-seize-counterfeit-unauthorized-e-cigarettes>> [Accessed 13 September 2021].

⁶ Id.