ANCHORAGE'S TAXATION OF E-CIGARETTES: AN E-CIGARETTE POLICY CASE STUDY

On November 4, 2020, Alaska's Anchorage Assembly unanimously voted to impose a city-wide excise tax on electronic smoking devices. The new e-cigarette tax rate – 55 percent of wholesale price – is the same tax rate the city levies on cigarettes and other tobacco products.

COMMUNITY SNAPSHOT

Located in South Central Alaska, Anchorage is Alaska's most populous city with an estimated 288,000 residents, representing nearly 40 percent of the state's population as of 2019.[1] It is a unified municipal consolidated city-borough,[2] bordering Matanuska-Susitna to the north, Kenai Peninsula to the south, and Valdez-Cordova to the east. The city is home to the third largest state park in the U.S. and contains the nation's second largest forest – an area populated by black bears, grizzly bears, northern timber wolves, moose, and foxes. Anchorage has won the National Civic League's All-America City Award four times[3] – an award that honors the work of communities that use inclusive civic engagement to address critical community issues and create stronger connections among residents, businesses, and nonprofit and government leaders.

BACKSTORY

Anchorage's public health community has long been aware of the significant health risks posed by vaping and has been concerned about the alarming rise in youth e-cigarette use. Between 2015 and 2019, vaping among Alaskan high school students skyrocketed from 18 percent to 26 percent.

Alaska, with one of the strongest and most well-funded tobacco control prevention programs in the country, was the first state in the country to mount a public education campaign about the harms of e-cigarettes.[4] In 2019, to reduce youth use of tobacco and e-cigarette products, the city increased the minimum legal sales age for tobacco products to 21.[5] Notably, the T21 law (that is, the legislation increasing the minimum legal sales age for tobacco products to 21) initially included an e-cigarette tax policy, but the city ultimately decided to remove that legislation to enable passage of the T21 policy.

However, advocacy efforts by public health groups advancing the T21 policy, media support, and the broad dissemination of information on the health risks of vaping, paved the way for the 2020 passage of the e-cigarette excise tax policy.

The Anchorage Assembly was also motivated to tax e-cigarettes because the neighboring jurisdiction – the Matanuska-Susitna ("Mat-Su") borough – passed an e-cigarette tax policy in 2015.[6] Mat-Su is considered a far less progressive and more libertarian community than Anchorage. A few other municipalities in Alaska, including Juneau and NW Arctic, also imposed an excise tax on e-cigarettes. The state of Alaska, however, currently does not tax e-cigarettes.[7]

Key Takeaways

- Alaska has one of strongest and most well-funded tobacco control prevention programs in the country.
- Between 2015 and 2019, vaping among Alaskan high school students skyrocketed from 18 percent to 26.1 percent.
- Neighboring jurisdictions passed similar e-cigarette tax policies in previous years, motivating Anchorage's public health community to push for new policy in the vaping prevention space.

ANCHORAGE E-CIGARETTE TAX POLICY

On August 25, 2020, two members of the Anchorage Assembly proposed amending the Anchorage municipal code chapter 12.40 to include an excise tax on electronic cigarettes and vaping devices. The proposed tax would be similar to that imposed on other tobacco products, which is currently 55 percent of the wholesale price.[8]

Evidence shows that raising prices is one of the most effective ways to reduce commercial tobacco initiation and increase quit attempts, underscoring the rationale for the e-cigarette tax bill.[9] Studies have shown that raising the price of e-cigarettes by 10 percent can lead to a 10 to 18 percent reduction in e-cigarette demand or consumption.[10] Price increases have also been shown to have the greatest impact among youth, who are particularly price sensitive.[11] In addition, taxes can help generate revenue for commercial tobacco control and public health efforts.

Following the measure's introduction, the Assembly held work sessions and hearings with the Assembly's attorney, public health advocacy groups,[12] and the city's health department. The American Cancer Society Cancer Action Network worked with the Assembly's attorney to draft the policy and review amendments.

During the public hearings, the e-cigarette tax policy was opposed by vape shops and independent e-cigarette retailers, as well as individuals who claimed they used e-cigarettes in their attempt to quit smoking. JUUL also ran advertisements throughout the city. The major arguments against the bill were that e-cigarettes are cessation products, and that young people are primarily obtaining these products via the internet. Public health advocates countered these arguments by noting that e-cigarettes are not FDA-approved cessation devices. Advocates also provided evidence, based on the state's robust compliance check program, that young people are still able to obtain these devices from over-the-counter retail establishments.[13] Public health advocates emphasized that the policy's goal was not to target adult users, but to prevent underage use. This argument was particularly persuasive to Assembly members.

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The public health educational campaign surrounding the city's new T21 policy also helped garner support for the e-cigarette tax policy. At Assembly meetings, members were shown several e-cigarette devices and were encouraged to talk with their children about the dangers of vaping. Members returned shocked by what they had learned from their offspring about both the popularity and the availability of these products.

Assembly members were also motivated to pass the policy because of Mat-Su's similar e-cigarette tax policy. This alleviated any concern that e-cigarette users could easily go to a different jurisdiction to obtain these products at cheaper prices.[14] While Assembly members were largely in favor of the e-cigarette tax policy, many members were unwilling to support a policy that imposed any tax on electronic smoking devices sold in marijuana shops. Alaska was one of the first states to fully legalize recreational marijuana.[15] The state taxes recreational marijuana primarily at the wholesale level,[16] while the city of Anchorage imposes a 5 percent retail sales tax.[17] Some Assembly members expressed concern that a tax on their e-cigarette products might alienate the local marijuana business community. As a result, before a final vote on the policy, amendments were introduced to exempt electronic smoking devices sold in marijuana shops. Public health advocates were not given an opportunity to comment on the amendments prior to the final vote on the policy.

On November 4, 2020, the Anchorage Assembly voted unanimously to end the exclusion of electronic cigarettes and vaping devices from the excise tax on tobacco products, by amending Anchorage municipal code chapter 12.40.[18] The final ordinance applies the city's existing excise tax on "other tobacco products" – 55 percent of the wholesale cost – to e-cigarettes.[19] The tax covers electronic smoking devices, any liquids or substances used in the devices, as well as components, parts, and accessories of the devices whether or not they are sold separately, excluding batteries or battery chargers when sold separately, and FDA-approved smoking cessation products. The tax does not apply to electronic smoking devices sold in marijuana retail establishments.

"Just one of several boxes at Service High School used to collect vape pens and accessories confiscated from students." (Mayowa Aina/Alaska Public Media)

The final ordinance:

- Amends the code's definition of "other tobacco products" to include "an electronic smoking device."[20]
- Defines "electronic smoking device" as a device "which can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. An electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device whether or not it contains nicotine. An electronic smoking device does not include any battery or battery charger when sold separately or smoking cessation products."[21]
- Amends the definition of "retailer" to exclude "a marijuana retail establishment in Alaska licensed under section 10.80.300 or state law engaged in the business of selling electronic smoking devices."[22]
- Defines "smoking cessation products" as "any FDA-approved tobacco cessation drug, device, or a combination product that is intended to help quit tobacco use, as those terms are defined in the Federal Food, Drug and Cosmetic Act (21 USC § 321)."[23]
- Exempts "electronic smoking devices sold to a marijuana retail establishment in Alaska licensed under section 10.80.300 or state law."[24]

On March 1, 2021, the ordinance took effect.[25]

Key Takeaways

- E-cigarette taxation continues to be one of the most effective ways to reduce tobacco initiation and increase quit attempts, especially among price-sensitive youth.
- Public health advocates effectively argued that e-cigarettes are not FDA-approved cessation devices and that young people can obtain e-cigarettes from retail establishments, debunking claims by many opponents of the e-cigarette tax bill.
- The public health educational campaign surrounding the city's new T21 policy also helped garner support for the e-cigarette tax policy.
- The Anchorage assembly unanimously voted to impose an excise tax – 55 percent of the wholesale price – on electronic smoking devices, with an exemption for devices sold in marijuana shops.

IMPLEMENTATION

Beginning on March 1, 2021, the city's treasury division implemented the e-cigarette tax policy. Since the city has an existing tobacco tax policy, which includes an excise tax of 55 percent on "other tobacco products," implementation of the e-cigarette tax policy was relatively simple. The department utilized existing structures and forms and made no significant changes to its procedures. It instructed retailers to include the required e-cigarette tax information under the "other tobacco products" line in the tax form they are required to submit monthly.[26]

The treasury department sent notices to all tobacco retailers and vape shops in the municipality informing them of the e-cigarette tax policy and advising them to start collecting taxes on their e-cigarettes. The Department also advised retailers that the tax would be applied to the entire e-cigarette product, including components, parts, and accessories. However, because the policy exempts electronic smoking devices sold in marijuana retail establishments, notwithstanding that these devices could potentially be used to vape nicotine, the Department made the decision to exempt marijuana retail establishments from the e-cigarette reporting requirement.

CONCLUSION

Anchorage's e-cigarette tax policy is an example of a comprehensive ad valorem tax – based on the wholesale price of the product – aimed at curbing the rise in a community's youth e-cigarette use. The tax, which is equivalent to the city's excise tax on other tobacco products, covers e-cigarette devices, as well as e-liquids, cartridges and other components and accessories of devices, excluding batteries and battery chargers when sold separately and smoking cessation products. The policy garnered high support among city officials concerned about the alarming rise in youth e-cigarette use both in Anchorage and nationally. The groundwork educational campaign by public health advocates and the media, as well as the community's prior work on tobacco control policies, particularly T21, helped deepen lawmakers' awareness of the youth e-cigarette problem. It helped create a sense of urgency to address this public health epidemic.

While this policy was successfully passed, one potential weakness is its exemption of vaping products sold in marijuana shops. Because vaping products sold in these establishments may be indistinguishable from products taxed under the policy, and could potentially be used to vape nicotine, this exemption could present enforcement challenges.

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ACKNOWLEDGMENTS

The Public Health Law Center would like to thank the following individuals for their help in providing background information for this case study: **Emily Nenon**, Government Relations Director, American Cancer Society Cancer Action Network; **Paula Reiswig**, Manager, Taxes & Tax Collection Program, City of Anchorage, Alaska.

The Public Health Law Center is a public interest legal resource center dedicated to improving health through the power of law and policy, grounded in the belief that everyone deserves to be healthy. Located at the Mitchell Hamline School of Law in Saint Paul, Minnesota, the Center helps local, state, national, tribal, and global leaders promote health by strengthening public policies.

Vaping Prevention Resource is a leading online destination for vaping prevention media, research, policy, and advocacy. A non-commercial, educational resource for communities, VPR was created by UNC-Chapel Hill researchers working on the front lines of tobacco control at the Lineberger Comprehensive Cancer Center and affiliated UNC schools.

IMAGE SOURCES AND CREDITS

PAGE 1. Photo by Wonderlane (@wonderlane) on Unsplash. **PAGE 3.** Photo by Mayowa Aina, Alaska Public Media. **PAGE 4.** MJ's One Stop Vape Shop, Photo by Find Vape Shop.

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