

February 14, 2017

Dear Senate Assessment and Taxation Committee:

Thank-you Ms. Chairperson and Members of the Senate Assessment and Taxation Committee, I appreciate the opportunity to speak with you today. My name is Tom Rogers. I am a partner/owner of Lucky's Convenience & Tobacco in Wichita. We own and operate three shops and have franchise agreements for another two, primarily selling vapor/electronic cigarette products along with tobacco products in two locations.

I am a businessman, constituent and hopefully considered a responsible citizen of the State of Kansas. I understand and applaud fiscal responsibility and the need for the State in the current economic climate to look for ways to increase revenues and balance the budget. That said, understanding that vice and sin taxes are an appealing approach to consider, I'd like to have an adult conversation and share some information that I hope you'll consider as you deliberate the best way forward.

My partners and I operate a small business that between ourselves and our franchisees employ twenty-two great people. Between us, our employees and over 17,000 customers in our database, last year we paid, either directly or indirectly, over \$148,000 in taxes and fees to the State of Kansas. My fellow small business owners and competitors represented here today, along with their customers, I'm sure contributed many times that figure.

We as a group have been fortunate to participate in an industry which has experienced rapid growth and nationally, according to Business Week and USA Today, is approaching a \$5 Billion market that, aside from the large tobacco companies, is comprised of more than 8,500 small independent shops like ours. Business has been good, we're not rich, but we're figuring out how to pay our employees, rents, insurance and, yes, taxes. But over the past year we've been inundated as an industry with challenges from multiple sources, above and beyond the typical day to day hurdles of operating a small business. The Food and Drug Administration with its unilaterally imposed Deeming Regulations and the Kansas Consumable Material Tax top the list. In each case, it appears that the large tobacco companies and their lobbyists have, at the very least guided, if not outright written, the rules and regulations being adopted.

In the case of the FDA Deeming Regulations, the only Electronic Nicotine Delivery System products grandfathered in and not requiring an exhaustive and expensive approval process were those on the market prior to February 15, 2007. An odd date considering the rules were adopted in 2016. Add to that the fact that the group of products grandfathered is almost entirely owned, manufactured and sold by the major tobacco companies, questions arise.

In the case of the Kansas Consumable Material Tax, it is my understanding that a representative of RJ Reynolds, soon to become part of the largest tobacco company in the world, suggested and advocated a tax on his own products, structured and adopted by the State Legislature in such a way that businesses providing, and the consumers using, electronic cigarette e-juice, or as you've defined it, Consumable Materials, would be inequitably impacted. Considering the \$5

Billion market statistic mentioned before and the fact that those dollars have a direct impact on revenue for Big Tobacco, my apologies for sounding like the old guy conspiracy theorist, but one has to ask; Why would a company representative propose a tax on his own products?

Whether you agree with me or not, I think that Big Tobacco has realized their vapor products can't compete with smaller and more innovative approaches and they now want to destroy an industry that they once thought would improve their profits and stock prices.

We can all agree that smoking, still the largest cause of preventable deaths in the United States, is a huge issue, both in terms of its effects on individual health and costs to the broader health system. But I propose that vaping is not smoking. Included in the FDA Deeming Regulations is a rule that I am prohibited from making what they call a Modified Risk Claim that our products "may have less risk, be less harmful or have fewer or no additives as compared to other tobacco products." Taking into account that cigarettes contain over 4,000 chemicals, including 43 known cancer-causing (carcinogenic) compounds and 400 other toxins and electronic cigarettes vaporize a simple solution of food grade vegetable glycerin, propylene glycol, flavor and sometimes nicotine. I'd challenge the assertion that our Vapor Products are Tobacco Products and assert that Vaping is not Smoking, but I'll leave that conversation for another day.

Since I'm not allowed to say our products are healthier, I'll refer to a study conducted by Public Health England and published by the Government of the United Kingdom. (Public Health England is the equivalent of the US Centers for Disease Control.) Key findings of the review include: "The current best estimate is that e-cigarettes are around 95% less harmful than smoking." Later the same study goes on to state: "The comprehensive review of the evidence finds that almost all of the 2.6 million adults using e-cigarettes in Great Britain are current or ex-smokers, most of whom are using the devices to help them quit smoking or prevent them going back to cigarettes." Professor Ann McNeill of Kings College London and independent author in the same study states: "There is no evidence that e-cigarettes are undermining England's falling smoking rates. Instead the evidence consistently finds that e-cigarettes are another tool for stopping smoking and in my view smokers should try vaping and vapers should stop smoking entirely. E-cigarettes could be a game changer in public health in particular by reducing the enormous health inequalities caused by smoking." Add to that a recommendation by the Royal Academy of Physicians, the UK equivalent of the American Medical Association, cited by the New York Times last year recommending that smokers switch to electronic cigarettes, saying that they are the best hope in generations for people addicted to tobacco cigarettes to quit. I believe the use of these devices and properly formulated Consumable Materials are something we should be encouraging for smokers rather than taxing and discouraging. I urge each of you to talk with someone you know who vapes, as I do every day with our customers. I believe you'll hear the same resounding support for the products from former smokers and even their physicians.

Health considerations and conspiracy theories aside, the reason we're here seems to be the intention to tax nicotine. I'd like to shine some light on what appear to be inequities in the current approach.

According to a study commissioned by the US Centers for Disease Control, the average American cigarette contains 10.2 milligrams of nicotine. A pack of cigarettes contains 204 mg. RJ Reynolds' Vuse e-cigarette, according to their own website, contains 4.8% nicotine by weight in a 2 milliliter cartridge. Assuming the suspension liquid in the cartridge is similar to our e-juice composition, this 4.8% would equate to 120 mg. The most popular size of e-juice, or Consumable Material, purchased in our stores last year was a 30 milliliter bottle with a nicotine strength of 3 milligrams per milliliter which totals 90 mg.

Using the Kansas Cigarette Tax and Consumable Material Tax as currently constructed, with or without the proposed changes in Senate Bill No. 130, the tax for the 204 mg of nicotine in a pack of cigarettes is \$1.29, the tax on the 2 ml Vuse cartridge is \$0.40 and the tax on the 30 ml bottle of consumable material for electronic cigarettes is \$6.00. Put in a different way, cigarettes are taxed at \$0.013/mg of nicotine, the Vuse at \$0.003/mg and e-juice at \$0.066/mg. A little quick math will show that e-juice is being taxed at a rate 5 times that of the high-health-concern cigarettes and 22 times the Vuse. If revenue is the issue at hand and nicotine taxation is the vehicle, with no attention paid to the health effects of any of the products, why don't we tax at a rate of say \$0.033/mg of nicotine on all nicotine-containing products (which should probably include patches and gum) raising the tax on cigarettes to \$6.73 per pack, \$3.96 per Vuse cartridge and effectively even the playing field.

By the way, using our sales data for 2016, assuming we were to sell the same amounts of e-liquid this year as we did last (which is highly unlikely since we assume the higher taxes will push our customers to purchase out of state or via the internet) the additional tax burden to our business and customers would be over \$150,000. Essentially doubling the \$148,000 I referenced earlier, if the intent is to kill the businesses represented in this room, I believe you'll accomplish the goal.

We firmly believe that electronic cigarettes combined with quality e-juices are a better alternative to smoking and that our products have helped and can continue to help improve the health of many Kansans. The current Consumable Material Tax and Senate Bill No. 130 are in direct conflict with those concerned with the human and monetary costs of smoking in Kansas and target entrepreneurs trying to employ Kansans and satisfy a growing market.

I want to thank-you all again for your valuable time, your interest and consideration.

**Tom Rogers**

**Lucky's Convenience and Tobacco**

**Wichita, KS**