Committee on Assessment and Taxation

Kansas Legislature

Topeka, KS

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Public Hearing to Discuss SB 54
AN ACT concerning taxation; relating to electronic cigarettes, definitions, enforcement and collections

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Good morning Chairman Tyson, Vice Chairman Kerschen and members of the Committee on Assessment and Taxation.

My name is Steve Gentry, and I'm senior director for regulatory tax in the Tax Department at RAI Services Company. RAI Services Company is a subsidiary of Reynolds American Inc., which is the parent company of R.J. Reynolds Tobacco Co., the second-largest U.S. tobacco company; American Snuff Company, the second-largest manufacturer of smokeless tobacco products; Santa Fe Natural Tobacco Company, manufacturers of Natural American Spirit tobacco products; Niconovum USA, Inc. and Niconovum AB, which markets innovative nicotine replacement therapy (NRT) products under the Zonnic brand name in the United States and Sweden, respectively; and R.J. Reynolds Vapor Company.

I'd like to thank you for the opportunity to testify here today in opposition to Senate Bill No. 54, a proposal that would be costly for the state, cumbersome for tax administrators, retailers and wholesalers, and confusing for consumers.

The bill in front of you is an unnecessary change to an existing tax on vapor products, also known as e-cigarettes, which the legislature approved in 2015. The approved tax has not been implemented yet, but it is my understanding that the state is close to being able to move forward with collecting this tax.

Compared to the current vapor tax law already on the books, this bill puts an unnecessary and incredible expense on the state by creating a need to (1) modify existing tax reporting documents to reflect the proposed changes, (2) revise existing educational assistance and FAQs to ensure taxpayers understand the proposed changes, and (3) supplement existing audit techniques with the purchase of specialized equipment to confirm nicotine levels used in taxpayer calculations of vapor tax remitted.

Tax reporting documents and educational assistance explaining the current vapor tax law have been available on the Kansas Department of Revenue website for some time in anticipation of the current vapor tax being implemented effective January 1 of this year. Any changes in these two areas because of Senate Bill 54, if passed, would only further delay the effective collection of a vapor tax that is already on the books.

This bill's proposed tax on the amount of nicotine suspended in a liquid used with e-cigarettes would force the State to re-evaluate its enforcement and audit efforts to include specialized equipment designed to measure the amount of nicotine in e-liquid solutions. Utilizing this type of equipment is the only way to measure and validate the accuracy of the amount of nicotine on which the vapor tax is being assessed. The cost of a machine to measure the nicotine content, depending on its sophistication, could be well into the six-figure range. In addition, staff would have to be hired and trained to operate these machines and additional resources would have to be secured just to administer the tax.

These expenses and delays can't be readily justified, especially at a time when Kansas is facing a projected budget deficit.

The law you passed in 2015 is ideal because it calls for a 20-cent per milliliter tax on the consumable material in a vapor product, meaning the liquid would be taxed. This method is easy to administer and it is easy for consumers, retailers and tax collectors to understand.

Taxing vapor products evenly by liquid milliliter is a fair tax for all vapor product manufacturers. Vapor products come in thousands of shapes and sizes, but taxing e-liquid is a relevant, applicable approach for all vapor products.

The liquid volume tax that you already approved only taxes the consumable material in the vapor product. This form of taxation is similar to the federal excise tax on gasoline. Irrespective of the size of your tank or whether you purchase regular or premium fuel, all consumers pay the same 18.4-cent tax per gallon of non-diesel fuel.

For more than 20 years, I have worked in regulatory tax at Reynolds. A big part of my job is interacting with tax officials in all 50 states, which provides ample opportunities to share information about new products and inform them about what is going on with tax policy in other states.

Currently, only seven states, including Kansas, and the District of Columbia, have passed vapor products taxes, primarily because these products are so new to the market.

All of you in the state legislature are to be commended for taking a leadership role in establishing good tax policy on vapor products.

Of the seven states, four of them have chosen to tax these products at a low, per-milliliter rate. So, the method that you have approved is in line with what is being done in the majority of states that have a vapor tax.

In my home state of North Carolina, a 5-cent per milliliter tax was approved by the legislature in 2014, and it went into effect June 1, 2015. As of October 2016, the state was averaging nearly $300,000 in revenue collections per month and had collected a little over $4 million.

Again, the tax is easy for all parties involved to understand and easy for officials to administer.

For all of the reasons I have mentioned, I encourage you to vote against Senate Bill 54.

We welcome further opportunities to discuss the issues that we have outlined, and we would be happy to discuss with state officials and policymakers the best approaches to taxing vapor products.

Thank you for your time and attention.