

PROTECTING AMERICAN LUNGS ACT OF 2019

FEBRUARY 21, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NEAL, from the Committee on Ways and Means,  
 submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4742]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4742) to amend the Internal Revenue Code of 1986 to impose a tax on nicotine used in vaping, etc, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Protecting American Lungs Act of 2019”.

**SEC. 2. IMPOSITION OF TAX ON NICOTINE FOR USE IN VAPING, ETC.**

(a) IN GENERAL.—Section 5701 of the Internal Revenue Code of 1986 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

“(h) NICOTINE.—On taxable nicotine, manufactured in or imported into the United States, there shall be imposed a tax equal to the dollar amount specified in section 5701(b)(1) (or, if greater, \$50.33) per 1,810 milligrams of nicotine (and a proportionate tax at the like rate on any fractional part thereof).”.

(b) TAXABLE NICOTINE.—Section 5702 of such Code is amended by adding at the end the following new subsection:

“(g) TAXABLE NICOTINE.—

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the term ‘taxable nicotine’ means any nicotine which has been extracted, concentrated, or synthesized.

“(2) EXCEPTION FOR FDA-APPROVED NICOTINE REPLACEMENT THERAPIES.—Such term shall not include any nicotine if the manufacturer or importer thereof demonstrates to the satisfaction of the Secretary that such nicotine will be used in a product which has been approved by the Food and Drug Administration for sale as a nicotine replacement therapy.

“(3) COORDINATION WITH TAXATION OF OTHER TOBACCO PRODUCTS.—Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco shall not be treated as containing taxable nicotine solely because the nicotine naturally occurring in the tobacco from which such product is manufactured has been concentrated during the ordinary course of manufacturing.”.

(c) TAXABLE NICOTINE TREATED AS A TOBACCO PRODUCT.—Section 5702(c) of such Code is amended by striking “and roll-your-own tobacco” and inserting “roll-your-own tobacco, and taxable nicotine”.

(d) MANUFACTURER OF TAXABLE NICOTINE.—Section 5702 of such Code is amended by adding at the end the following new subsection:

“(r) MANUFACTURER OF TAXABLE NICOTINE.—

“(1) IN GENERAL.—Any person who extracts, concentrates, or synthesizes nicotine shall be treated as a manufacturer of taxable nicotine (and as manufacturing such taxable nicotine).

“(2) APPLICATION OF RULES RELATED TO MANUFACTURERS OF TOBACCO PRODUCTS.—Any reference to a manufacturer of tobacco products, or to manufacturing tobacco products, shall be treated as including a reference to a manufacturer of taxable nicotine, or to manufacturing taxable nicotine, respectively.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to articles manufactured or imported in calendar quarters beginning more than 90 days after the date of the enactment of this Act.

## I. SUMMARY AND BACKGROUND

### A. PURPOSE AND SUMMARY

H.R. 4742, the Protecting American Lungs Act of 2019, amends the Internal Revenue Code of 1986, as amended, to impose a tax on nicotine used in vaping, etc., that is manufactured in or imported into the United States, with certain exceptions. H.R. 4742 defines taxable nicotine as any nicotine which has been extracted, concentrated, or synthesized, and imposes an excise tax on taxable nicotine at a rate of \$27.81 per gram of nicotine.

## B. BACKGROUND AND NEED FOR LEGISLATION

E-cigarettes are battery-operated devices that heat a liquid into a vapor for inhalation. Usually this liquid contains nicotine and can contain other ingredients such as flavors and cannabis oils.<sup>1</sup> E-cigarettes entered the U.S. market circa 2006 and are an approximately \$20 billion global industry today.<sup>2,3</sup> Juul Labs, Inc. is the largest e-cigarette provider in the U.S., controlling more than 70 percent of the e-cigarette market.<sup>4</sup> People often use the terms “e-cigarettes,” “vapes” and “Juuls” interchangeably.

E-cigarettes are the most commonly used nicotine-containing products among American youth.<sup>5</sup> With more than 15,500 flavors, a variety of colorful packaging, tech appeal, and engaging marketing strategies, e-cigarettes are very appealing to kids and teens.<sup>6</sup> The Surgeon General has described e-cigarette use among youth as an epidemic.<sup>7</sup> According to the Centers for Disease Control and Prevention (CDC), there were 3.6 million American middle and high school e-cigarette users in 2018.<sup>8</sup> According to the most recent CDC data, more than one in four high school students say they have used an e-cigarette in the past 30 days.<sup>9</sup> The 2018 Monitoring the Future (MTF) survey—which offers a look into the drug use and attitudes of the nation’s eighth, 10th, and 12th graders—found that between 2017 and 2018, the percentage of 12th graders who reported vaping nicotine nearly doubled.<sup>10</sup> This translates to 1.5 million more students using e-cigarettes in 2018 compared to 2017. This year-over-year increase was the most significant growth in use of any substance tracked by the MTF survey since it began in 1975.<sup>11</sup>

With this increase in e-cigarette use, related lung illnesses have also spiked. As of October 17, 2019, the CDC confirmed 1,358 cases

<sup>1</sup>Public Health Consequences of E-Cigarettes. *The National Academies of Sciences, Engineering, and Medicine*, (2018). Available at: <https://www.nap.edu/resource/24952/012318ecigaretteHighlights.pdf>.

<sup>2</sup>Jones, Lora. “Vaping: How popular are e-cigarettes?” *BBC News*, (2019). Available at: <https://www.bbc.com/news/business-44295336>.

<sup>3</sup>E-Cigarettes: Use and Taxation. *World Bank Group*, (2019). Available at: <http://documents.worldbank.org/curated/en/356561555100066200/pdf/E-Cigarettes-Use-and-Taxation.pdf>.

<sup>4</sup>Behind the Explosive Growth of JUUL. *Truth Initiative*, (2019). Available at: <https://truthinitiative.org/research-resources/emerging-tobacco-products/behind-explosive-growth-juul>.

<sup>5</sup>“E-cigarette Market 2019 Industry News by Revenue, Business Growth, Top Key Players Update, Industry Demand, Share, Global Trend, Business Statistics and Research Methodology by Forecast to 2024,” *MarketWatch*, (2019). Available at: <https://www.marketwatch.com/press-release/e-cigarette-market-2019-industry-news-by-revenue-business-growth-top-key-players-update-industry-demand-share-global-trend-business-statistics-and-research-methodology-by-forecast-to-2024-2019-06-12>.

<sup>6</sup>“Industry Watch. Juul E-Cigarettes: Fueling a Youth Epidemic,” *Campaign for Tobacco-free Kids*, (2019). Available at: <https://www.tobaccofreekids.org/what-we-do/industry-watch/e-cigarettes>.

<sup>7</sup>Surgeon General’s Advisory on E-cigarette Use Among Youth, *U.S. Department of Health and Human Services, Office of the Surgeon General*, (2019). Available at: <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

<sup>8</sup>K. Cullen, et al., Flavored Tobacco Product Use Among Middle and High School Students—United States, 2014—2018. *Centers for Disease Control and Prevention*, (2019). Available at: <https://www.cdc.gov/mmwr/volumes/68/wr/mm6839a2.htm>.

<sup>9</sup>*Id.*

<sup>10</sup>L.D. Johnston, et al., Monitoring the Future National Survey Results on Drug Use 1975–2018 (January 2019). *Institute for Social Research, University of Michigan*, (2019). Available at: <https://files.eric.ed.gov/fulltext/ED594190.pdf>.

<sup>11</sup>Volkow, Nora, “Monitoring the Future Survey Results Show Alarming Rise in Teen Vaping,” *National Institute on Drug Abuse*, (2018). Available at: <https://www.drugabuse.gov/about-nida/noras-blog/2018/12/monitoring-future-survey-results-show-alarming-rise-in-teen-vaping>.

of vaping-related illnesses across the U.S., including 33 deaths.<sup>12</sup> This is an increase of 180 cases and seven deaths from the previous week. The CDC still doesn't know what is causing the illnesses and has not identified a brand or substance tied to all cases.<sup>13</sup>

Experts agree that e-cigarettes are a gateway to youth smoking. The National Academies of Science, Engineering and Medicine concluded there is "substantial evidence" that if young adults use e-cigarettes, they are at increased risk of using traditional cigarettes.<sup>14</sup> E-cigarettes typically contain nicotine, which is highly addictive.<sup>15</sup> One Juul pod can contain as much nicotine as a full pack of cigarettes, or about 200 puffs.<sup>16</sup>

Product manufacturers claim that e-cigarettes are a useful alternative to smoking and can help people smoking traditional tobacco cigarettes quit. However, the Food and Drug Administration (FDA) has not found any e-cigarette to be safe and effective in helping smokers quit. E-cigarettes contain harmful chemicals, including some of the same toxic chemicals found in regular cigarettes, such as nicotine, formaldehyde, and lead.<sup>17</sup> While these toxic chemicals may be at lower levels compared to regular cigarettes, they remain harmful and can cause cancer, birth defects, or other health problems. Due to differences in regulation compared to traditional cigarettes, e-cigarette manufacturers are not yet required to disclose the chemicals in their products, where they are manufactured, how they are made, or the potential health risks they pose.<sup>18</sup>

Tobacco excise taxes reduce youth tobacco use.<sup>19</sup> Currently, there is no federal excise tax on the nicotine contained in e-cigarettes. The World Health Organization and the Secretariat of the Framework Convention on Tobacco Control have recommended that countries treat and regulate e-cigarettes no differently than other tobacco products.<sup>20</sup> The Surgeon General has called raising prices on cigarettes "one of the most effective tobacco control interventions" because increasing price is proven to reduce smoking, especially among kids.<sup>21</sup>

H.R. 4742 would impose an excise tax on nicotine at a rate of \$27.81 per gram. This tax could result in up to a 75 percent increase in the cost of Juul pods. Numerous economic studies in peer-

<sup>12</sup>CDC, States Update Number of Cases of Lung Injury Associated with Use of E-cigarette, or Vaping, Products. *Centers for Disease Control and Prevention*, (2019). Available at: <https://www.cdc.gov/media/releases/2019/s1017-update-number-lung-injury-cases.html>.

<sup>13</sup>*Id.*

<sup>14</sup>New Report One of the Most Comprehensive Studies on Health Effects of E-Cigarettes; Finds That Using E-Cigarettes May Lead Youth to Start Smoking, Adults to Stop Smoking. *National Academies of Sciences, Engineering and Medicine*, (2018). Available at: <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=24952&ga=2.227315540.810940964.1516640363-1933305849.1453397105>.

<sup>15</sup>"Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults," *Centers for Disease Control and Prevention*, (2019). Available at: [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html).

<sup>16</sup>"How much nicotine is in JUUL?" *Truth Initiative*, (2019). Available at: <https://truthinitiative.org/research-resources/emerging-tobacco-products/how-much-nicotine-juul>.

<sup>17</sup>"The Impact of E-Cigarettes on the Lung," *American Lung Association*, (2019). Available at: <https://www.lung.org/stop-smoking/smoking-facts/impact-of-e-cigarettes-on-lung.html>.

<sup>18</sup>*Id.*

<sup>19</sup>Raising Cigarette Taxes Reduces Smoking, Especially Among Kids (and the Cigarette Companies Know It). *Campaign for Tobacco-free Kids*, (2019). Available at: <https://www.tobaccofreekids.org/assets/factsheets/0146.pdf>.

<sup>20</sup>World Bank Group, *supra* note 3.

<sup>21</sup>The Health Consequences of Smoking—50 Years of Progress. *U.S. Department of Health and Human Services, Office of the Surgeon General*, (2014). Available at: <https://www.hhs.gov/sites/default/files/consequences-smoking-exec-summary.pdf>.

reviewed journals have documented that cigarette tax or price increases reduce both adult and underage smoking. The general consensus is that nationally, every 10 percent increase in the real price of cigarettes reduces adult smoking by about two percent, reduces smoking among young adults by about 3.5 percent, reduces the number of kids who smoke by six or seven percent, and reduces overall cigarette consumption by approximately three to five percent.<sup>22</sup>

While the tax imposed under H.R. 4742 is primarily directed at e-cigarettes, it applies to all nicotine, with two primary exceptions. First, nicotine found in traditional tobacco products is exempted, because those products are already subject to a federal excise tax. Second, the tax would not apply to nicotine used in a product determined by the FDA to be a nicotine replacement therapy. By taxing nicotine (rather than nicotine products), the excise tax would apply to nicotine ingested by any method, and not just on e-cigarettes. Imposing the excise tax on nicotine (rather than nicotine products) also ensures that e-cigarette liquid mixed by the end user is subject to tax on the nicotine in the liquid.

### C. LEGISLATIVE HISTORY

#### *Background*

H.R. 4742, the Protecting American Lungs Act of 2019, was introduced on October 18, 2019, and was referred to the Committee on Ways and Means.

#### *Committee hearings*

In light of the urgent public health crisis caused by the increased use of vaping, the Committee chose to move expeditiously to consider legislation. The Committee on Appropriations, the Committee on Energy and Commerce, and the Committee on Oversight and Reform have established a fulsome record of hearings.

- On October 16, 2019, the Committee on Appropriations held a subcommittee hearing entitled, “E-cigarettes: An Emerging Threat to Public Health,” to discuss the magnitude of the current vaping-related lung disease epidemic from e-cigarette use.
- On Wednesday, October 16, 2019 the Committee on Energy and Commerce held a subcommittee hearing entitled, “Legislation to Reverse the Youth Tobacco Epidemic,” to discuss H.R. 2339, Reversing the Youth Tobacco Epidemic Act of 2019.
- On September 24, 2019, the Committee on Oversight and Reform held a subcommittee hearing entitled, “Don’t Vape: Examining the Outbreak of Lung Disease and CDC’s urgent Warning Not to Use E-Cigarettes,” to discuss the outbreak of lung illness associated with using e-cigarette products, the causes of the outbreak, the CDC and state health officials warning against the use of e-cigarettes, and CDC reports that youth use of e-cigarettes has risen again.

<sup>22</sup> State Tobacco Tax Increases: Explanations and Sources for Projections of New Revenues & Benefits. *Cancer Action Network*, (2020). Available at: <https://www.fightcancer.org/policy-resources/state-tobacco-tax-increases-explanations-and-sources-projections-new-revenues>.

- On July 25, 2019, the Committee on Oversight and Reform held a subcommittee hearing entitled “Examining JUUL’s Role in the Youth Nicotine Epidemic: Part II,” to discuss JUUL’s role in the youth nicotine addiction epidemic, marketing to youth, misleading health claims, and new partnerships with traditional tobacco companies.

- On July 24, 2019, the Committee on Oversight and Reform held a subcommittee hearing entitled, “Examining JUUL’s Role in the Youth Nicotine Epidemic: Part I,” to discuss JUUL’s role in the youth nicotine addiction epidemic, marketing to youth, misleading health claims, and new partnerships with traditional tobacco companies.

#### *Committee action*

The Committee on Ways and Means marked up H.R. 4742 on October 23, 2019, and ordered the bill, as amended, favorably reported by a vote of 24 yeas, 15 nays, and one present.

## II. EXPLANATION OF THE BILL

### A. IMPOSITION OF TAX ON NICOTINE FOR USE IN VAPING (SEC. 1 OF THE BILL AND SECS. 5701 AND 5702 OF THE CODE)

#### PRESENT LAW

Federal excise taxes are imposed upon various types of tobacco products and cigarette papers and tubes.<sup>23</sup> Tobacco products are cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco. A “cigar” is any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, other than any roll of tobacco which is a cigarette. The term “cigarette” includes (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (ii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette. “Smokeless tobacco” is any snuff or chewing tobacco. “Pipe tobacco” is any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe. “Roll-your-own tobacco” is any tobacco, which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. “Cigarette paper” is paper, or any other material except tobacco, prepared for use as a cigarette wrapper. A “cigarette tube” is cigarette paper made into a hollow cylinder for use in making cigarettes.<sup>24</sup>

The following table lists the rates on tobacco products and cigarette papers and tubes.

| Tobacco Product  | Present Law Tax Rates  |
|--|--|
| “Small cigars” (weighing three pounds or less per thousand) <sup>1</sup> .   | \$50.33 per thousand.  |
| “Large cigars” (weighing more than three pounds per thousand) <sup>2</sup> . | 52.75 percent of manufacturer’s sale price, but not more than 40.26 cents per cigar. |

<sup>23</sup> Sec. 5701 of the Internal Revenue Code (IRC).

<sup>24</sup> Sec. 5702 of the IRC.

| Tobacco Product   | Present Law Tax Rates                                       |
|---|---|
| “Small cigarettes” <sup>1</sup> (weighing three pounds or less per thousand) <sup>3</sup> .   | \$50.33 per thousand.                                       |
| “Large cigarettes” <sup>2</sup> (weighing more than three pounds per thousand) <sup>4</sup> . | \$105.69 per thousand.                                      |
| Snuff <sup>5</sup> .....  | \$1.51 per pound. <sup>6</sup>                              |
| Chewing tobacco <sup>7</sup> .....  | 50.33 cents per pound.                                      |
| Pipe tobacco <sup>8</sup> .....   | \$2.8311 per pound.   |
| Roll-your-own tobacco <sup>9</sup> .....  | \$24.78 per pound.  |
| Cigarette papers <sup>10</sup> .....  | 3.15 cents for each 50 papers (or fractional part thereof). |
| Cigarette tubes <sup>11</sup> .....   | 6.30 cents for each 50 tubes (or fractional part thereof).  |

<sup>1</sup> Sec. 5701(a)(1).

<sup>2</sup> Sec. 5701(a)(2).

<sup>3</sup> Sec. 5701(b)(1).

<sup>4</sup> Large cigarettes more than 6.5 inches in length are taxed as small cigarettes, counting each 2.75 inches (or fraction thereof) of the length of each as one cigarette. Sec. 5701(b)(2).

<sup>5</sup> Sec. 5701(e)(1).

<sup>6</sup> Each of the tax rates on snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco is applied proportionately to fractional parts of a pound.

<sup>7</sup> Sec. 5701(e)(2).

<sup>8</sup> Sec. 5701(f).

<sup>9</sup> Sec. 5701(g).

<sup>10</sup> Cigarette papers measuring more than 6.5 inches in length are taxed at the rate prescribed, counting each 2.75 inches (or fraction thereof) of the length of each as one cigarette paper. Sec. 5701(c).

<sup>11</sup> Cigarette tubes measuring more than 6.5 inches in length are taxed at the rate prescribed, counting each 2.75 inches (or fraction thereof) of the length of each as one cigarette tube. Sec. 5701(d).

The manufacturer or importer of a tobacco product or cigarette paper or tube has the initial liability for the relevant excise tax, but the requirement to pay the tax is not triggered until the product is removed from the taxpayer’s premises or, in the case of an imported product, from customs custody or bond. The tax is determined and paid at the time of removal unless the taxpayer has a deferral bond in place, in which case the taxes are paid on the basis of semi monthly return periods.<sup>25</sup> Any taxpayer who is liable for a gross amount of taxes equal to or exceeding \$5,000,000 during a calendar year must make deposits of tax for the following year by electronic funds transfer.<sup>26</sup>

#### *Transfer rules and removals without tax*

Tobacco products and cigarette papers and tubes may be transferred between bonded premises of manufacturers of tobacco products and export warehouse proprietors without payment of the tax; the transferee is liable for the tax on the transferred tobacco products and papers and tubes.<sup>27</sup> Tobacco products and cigarette papers and tubes may also be removed without payment of tax for exportation; the exporter is relieved from the tax once proof of exportation is obtained.<sup>28</sup> Tax-paid product exported from the United States is eligible for drawback of the tax under certain conditions.<sup>29</sup> Imported tobacco products may be released from customs custody in bulk for transfer to the bonded premises of a manufacturer or export warehouse proprietor without payment of the tax; the transferee is then responsible for the taxes.<sup>30</sup> Generally, previously exported domestic tobacco products may be reimported<sup>31</sup> in the United States only if they are transferred to the original manufacturer or to an export warehouse proprietor authorized by the

<sup>25</sup> Sec. 5703 of the IRC.

<sup>26</sup> Sec. 5703(b) of the IRC.

<sup>27</sup> Sec. 5703(a) and 5704 of the IRC.

<sup>28</sup> Sec. 5704(b) of the IRC.

<sup>29</sup> Sec. 5706 of the IRC.

<sup>30</sup> Sec. 5704(c) of the IRC.

<sup>31</sup> A good is reimported if it is marked for export, but is returned to the United States without payment of duty. See 18 U.S.C. sec. 544.

original manufacturer.<sup>32</sup> To prevent the diversion of tobacco products destined for export without payment of tax, however, packages bearing export marks are not allowed in the domestic marketplace.<sup>33</sup> The tax is refunded or credited (without interest) for products withdrawn from the market and returned to bonded premises.<sup>34</sup> Tax-paid products that are lost by casualty or certain disasters are eligible for tax refunds or credits.<sup>35</sup>

*Permits and bonds*

Manufacturers and importers of tobacco products, processed tobacco, and proprietors of export warehouses must obtain permits to engage in such businesses.<sup>36</sup> A permit is obtained by application to the Secretary. The Secretary may deny the application if (1) the business premises are inadequate to protect the revenue; (2) the activity to be carried out at the business premises does not meet such minimum capacity or activity requirements as prescribed by the Secretary; (3) the applicant is, by reason of his business experience, financial standing, or trade connections, not likely to maintain operations in compliance with the applicable provisions of the Code; (4) the applicant has been convicted of a felony violation of Federal or state criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes; or (5) the applicant has failed to disclose any material information required or made any material false statement in the application. In the case of a corporation, an applicant includes any officer, director, or principal stockholder and, in the case of a partnership, a partner.<sup>37</sup>

A permit is conditioned upon compliance with relevant provisions of the Code and related regulations pertaining to tobacco products and cigarette papers and tubes. The Secretary may suspend or revoke a permit after a notice and hearing if the holder (1) has not in good faith complied with those rules or has violated any other provision of the Code involving intent to defraud; (2) has violated the conditions of the permit; (3) has failed to disclose any material information required or made any material false statement in the permit application; (4) has failed to maintain the business premises in such a manner as to protect the revenue; (5) is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with the applicable provisions of the Code; or (6) has been convicted of a felony violation of Federal or state criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes.<sup>38</sup>

A surety bond is required to be furnished by manufacturers of tobacco products or cigarette papers and tubes and export warehouse proprietors before they commence business.<sup>39</sup> Importers are not required to post a surety bond because the requirement to pay the tax is triggered at the time the tobacco products or cigarette papers

<sup>32</sup> Secs. 5754 and 5761(c) of the IRC.

<sup>33</sup> Secs. 5754(a) and 5761(c) of the IRC.

<sup>34</sup> Sec. 5705 of the IRC.

<sup>35</sup> Secs. 5705 and 5708 of the IRC.

<sup>36</sup> Sec. 5713(a) of the IRC.

<sup>37</sup> Sec. 5712 of the IRC.

<sup>38</sup> Sec. 5713 of the IRC.

<sup>39</sup> Sec. 5711 of the IRC.



or tubes are released from customs custody. Prior to that time, the customs bond is applicable.

#### *Occupational tax*

An occupational tax of \$1,000 per year is imposed on manufacturers of tobacco products, cigarette papers and tubes, and export warehouse proprietors.<sup>40</sup> A reduced rate of \$500 per year applies to taxpayers with excise tax liability in the prior year of less than \$500,000.<sup>41</sup> Controlled groups are treated as a single person. Any person engaged in business subject to the occupational tax who willfully fails to pay the tax imposed is subject to a fine of not more than \$5,000 or imprisonment of not more than two years, or both, for each such offense.<sup>42</sup>

#### *Miscellaneous rules, including operational, reporting, and record-keeping requirements*

Before removal, tobacco products, processed tobacco, and cigarette papers and tubes must be in packages and bear such marks, labels, and notices as required by the regulations.<sup>43</sup> The Code prohibits lottery features and indecent or immoral material from being contained in or attached to a package of tobacco products or cigarette papers or tubes.<sup>44</sup>

Manufacturers, importers, and export warehouse proprietors are required to keep records, file operating reports, and make accurate inventories as required by regulations.<sup>45</sup> Tobacco products may be furnished by a manufacturer to its employees or put to experimental use without payment of tax under conditions set forth in regulations.<sup>46</sup>

#### *Fines and penalties*

The Code contains provisions relating to the purchase, receipt, possession, sale, or disposal of certain tobacco products and cigarette papers and tubes.<sup>47</sup> It also imposes restrictions on importation of previously exported tobacco products.<sup>48</sup> Civil and criminal penalties and forfeiture provisions apply for failure to comply with the tobacco provisions.<sup>49</sup> The criminal and forfeiture provisions of subtitle F of the Code that apply to taxes in general also apply to tobacco taxes.

Civil penalties apply to certain actions including the willful failure to comply with the duties imposed (such as recordkeeping and labeling), failure to pay tax, and for the illegal sale of tobacco products.<sup>50</sup> Criminal penalties apply to certain actions including engaging in business unlawfully, failing to furnish certain information or furnishing false or fraudulent information, tax evasion, unlawful removal of tobacco products or cigarette papers or tubes, and for purchasing, receiving, possessing, or selling tobacco products or cig-

<sup>40</sup> Sec. 5731(a) of the IRC.

<sup>41</sup> Sec. 5731(b) of the IRC.

<sup>42</sup> Sec. 5731(c) of the IRC.

<sup>43</sup> Secs. 5723(a) and (b) of the IRC.

<sup>44</sup> Secs. 5723(c) and (d) of the IRC.

<sup>45</sup> Secs. 5721-22 and 5741 of the IRC.

<sup>46</sup> Sec. 5704(a) of the IRC.

<sup>47</sup> Sec. 5751 of the IRC.

<sup>48</sup> Sec. 5754 of the IRC.

<sup>49</sup> Secs. 5751-52 and 5761-63 of the IRC.

<sup>50</sup> Sec. 5761 of the IRC.

arette papers or tubes unlawfully.<sup>51</sup> Tobacco products and cigarette papers and tubes are subject to forfeiture if they are possessed with the intent to defraud the United States, or are not in packaging as required under the law.<sup>52</sup> Additional property may also be subject to forfeiture if it is used to engage in the manufacturing business unlawfully, or if the proprietor makes false or fraudulent records or reports with the intent to defraud the United States. Certain forfeited, condemned, or abandoned tobacco products or cigarette papers and tubes shall be disposed of in accordance with regulations.<sup>53</sup>

#### REASONS FOR CHANGE

The Committee observes that the use of nicotine products, such as electronic cigarettes and other vaping products, has increased significantly in recent years, particularly among teenagers and young adults. In addition, the Committee notes that vaping product use has been associated with many cases of severe lung injury, presenting a public health crisis. The provision is intended to discourage use of nicotine products by increasing the costs of such products.

#### EXPLANATION OF PROVISION

The provision imposes a new excise tax on taxable nicotine. The amount of tax is the greater of:

- (i) the dollar amount specified for small cigarettes in section 5701(b)(1), or
- (ii) \$50.33 per 1,810 milligrams of nicotine (and a proportionate tax on any fractional part thereof).

The provision defines taxable nicotine as any nicotine which has been extracted, concentrated, or synthesized. However, the definition excludes any nicotine if the manufacturer or importer demonstrates to the satisfaction of the Secretary that such nicotine will be used in a product which has been approved by the Food and Drug Administration for sale as a nicotine replacement therapy. Additionally, other tobacco products that are currently subject to tax shall not be treated as containing taxable nicotine solely because the nicotine naturally occurring in the tobacco from which such product is manufactured has been concentrated during the ordinary course of manufacturing.

Under the provision, general provisions that apply to tobacco products, such as the (i) packaging requirements, (ii) provisions relating to the purchase, receipt, possession, or sale, and (iii) provisions relating to civil and criminal penalties, apply to taxable nicotine.

Additionally, references in the Code to a manufacturer of tobacco products or to manufacturing tobacco products include references to a manufacturer of taxable nicotine or to manufacturing taxable nicotine, respectively. Therefore, a manufacturer of taxable nicotine is subject to the occupational tax and other requirements that apply to manufacturers of tobacco products. Under the provision, a manu-

<sup>51</sup>Sec. 5762 of the IRC.

<sup>52</sup>Sec. 5763 of the IRC.

<sup>53</sup>Sec. 5753 of the IRC.

facturer of taxable nicotine includes any person who extracts, concentrates, or synthesizes nicotine.

EFFECTIVE DATE

The provision applies to articles manufactured or imported in calendar quarters beginning more than 90 days after the date of enactment.

**III. VOTES OF THE COMMITTEE**

Pursuant to clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 4742 on October 23, 2019.

An amendment to the amendment in the nature of a substitute offered by Mr. Ferguson was ruled non-germane and Mr. Ferguson appealed the ruling of the Chair. Mr. Thompson’s motion to table the appeal of the ruling of the Chair passed by a roll call vote of 25 yeas to 16 nays. The vote was as follows:

| Representative | Yea | Nay | Present | Representative  | Yea | Nay | Present |
|----------------|-----|-----|---------|-----------------|-----|-----|---------|
| Mr. Neal       | X   |     |         | Mr. Brady       |     | X   |         |
| Mr. Lewis      | X   |     |         | Mr. Nunes       |     | X   |         |
| Mr. Doggett    | X   |     |         | Mr. Buchanan    |     | X   |         |
| Mr. Thompson   | X   |     |         | Mr. Smith       |     | X   |         |
| Mr. Larson     | X   |     |         | Mr. Marchant    |     | X   |         |
| Mr. Blumenauer | X   |     |         | Mr. Reed        |     | X   |         |
| Mr. Kind       | X   |     |         | Mr. Kelly       |     |     |         |
| Mr. Pascrell   | X   |     |         | Mr. Holding     |     | X   |         |
| Mr. Davis      | X   |     |         | Mr. Smith       |     | X   |         |
| Ms. Sánchez    | X   |     |         | Mr. Rice        |     | X   |         |
| Mr. Higgins    | X   |     |         | Mr. Schweikert  |     | X   |         |
| Ms. Sewell     | X   |     |         | Ms. Walorski    |     | X   |         |
| Ms. DelBene    | X   |     |         | Mr. LaHood (IL) |     | X   |         |
| Ms. Chu (CA)   | X   |     |         | Mr. Wenstrup    |     | X   |         |
| Ms. Moore      | X   |     |         | Mr. Arrington   |     | X   |         |
| Mr. Kildee     | X   |     |         | Mr. Ferguson    |     | X   |         |
| Mr. Boyle      | X   |     |         | Mr. Estes       |     | X   |         |
| Mr. Beyer      | X   |     |         |                 |     |     |         |
| Mr. Evans      | X   |     |         |                 |     |     |         |
| Mr. Schneider  | X   |     |         |                 |     |     |         |
| Mr. Suozzi     | X   |     |         |                 |     |     |         |
| Mr. Panetta    | X   |     |         |                 |     |     |         |
| Ms. Murphy     | X   |     |         |                 |     |     |         |
| Mr. Gomez      | X   |     |         |                 |     |     |         |
| Mr. Horsford   | X   |     |         |                 |     |     |         |

The amendment in the nature of a substitute to H.R. 4742 was agreed to by voice vote (with a quorum being present).

H.R. 4742 was agreed to by a roll call vote of 24 yeas to 15 nays and 1 present. The vote was as follows:

| Representative | Yea | Nay | Present | Representative | Yea | Nay | Present |
|----------------|-----|-----|---------|----------------|-----|-----|---------|
| Mr. Neal       | X   |     |         | Mr. Brady      |     | X   |         |
| Mr. Lewis      | X   |     |         | Mr. Nunes      |     |     |         |
| Mr. Doggett    |     |     | X       | Mr. Buchanan   | X   |     |         |
| Mr. Thompson   | X   |     |         | Mr. Smith      |     | X   |         |
| Mr. Larson     | X   |     |         | Mr. Marchant   |     | X   |         |
| Mr. Blumenauer | X   |     |         | Mr. Reed       |     | X   |         |
| Mr. Kind       | X   |     |         | Mr. Kelly      |     | X   |         |
| Mr. Pascrell   | X   |     |         | Mr. Holding    |     | X   |         |
| Mr. Davis      | X   |     |         | Mr. Smith      |     | X   |         |

| Representative | Yea | Nay | Present | Representative  | Yea | Nay | Present |
|----------------|-----|-----|---------|-----------------|-----|-----|---------|
| Ms. Sánchez    | X   |     |         | Mr. Rice        | X   |     |         |
| Mr. Higgins    | X   |     |         | Mr. Schweikert  |     | X   |         |
| Ms. Sewell     | X   |     |         | Ms. Walorski    |     | X   |         |
| Ms. DelBene    | X   |     |         | Mr. LaHood (IL) |     | X   |         |
| Ms. Chu (CA)   | X   |     |         | Mr. Wenstrup    |     | X   |         |
| Ms. Moore      | X   |     |         | Mr. Arrington   |     | X   |         |
| Mr. Kildee     | X   |     |         | Mr. Ferguson    |     | X   |         |
| Mr. Boyle      | X   |     |         | Mr. Estes       |     | X   |         |
| Mr. Beyer      | X   |     |         |                 |     |     |         |
| Mr. Evans      | X   |     |         |                 |     |     |         |
| Mr. Schneider  | X   |     |         |                 |     |     |         |
| Mr. Suozzi     | X   |     |         |                 |     |     |         |
| Mr. Panetta    | X   |     |         |                 |     |     |         |
| Ms. Murphy     |     | X   |         |                 |     |     |         |
| Mr. Gomez      | X   |     |         |                 |     |     |         |
| Mr. Horsford   |     |     |         |                 |     |     |         |

**IV. BUDGET EFFECTS OF THE BILL**

**A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS**

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill.

The bill is estimated to increase Federal fiscal year budget receipts by \$9.882 billion dollars for the period 2019 through 2029.

| Item  | Fiscal years in millions of dollars— |       |       |       |       |       |       |      |      |      |         |         |
|---|--------------------------------------|-------|-------|-------|-------|-------|-------|------|------|------|---------|---------|
|   | 2020                                 | 2021  | 2022  | 2023  | 2024  | 2025  | 2026  | 2027 | 2028 | 2029 | 2020–24 | 2020–29 |
| Imposition of Tax on<br>Nicotine for Use in<br>Vaping ..... | 438                                  | 1,189 | 1,150 | 1,101 | 1,058 | 1,041 | 1,006 | 981  | 967  | 953  | 4,935   | 9,882   |

NOTE: Details do not add to totals due to rounding.

**B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY**

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the bill involves no new tax expenditure.

**C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE**

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by CBO, the following statement by CBO is provided.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 18, 2019.*

Hon. RICHARD NEAL,  
*Chairman, Committee on Ways and Means,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed revised cost estimate for H.R. 4742, the Protecting American Lungs Act. This estimate supersedes the cost esti-

mate for H.R. 4742 that CBO transmitted on October 31, 2019. This estimate includes a private-sector mandate statement that was missing from the previous estimate, but is otherwise unchanged.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Bayard Meiser.

Sincerely,

PHILLIP SWAGEL,  
*Director.*

Enclosure.

| <b>At a Glance</b>   |      |                                     |                     |
|--|------|-------------------------------------|---------------------|
| <b>H.R. 4742, Protecting American Lungs Act of 2019</b>  |      |                                     |                     |
| As ordered reported by the House Committee on Ways and Means on October 23, 2019               |      |                                     |                     |
| By Fiscal Year, Millions of Dollars  | 2020 | 2020-2024                           | 2020-2029           |
| Direct Spending (Outlays)  | 0    | 0                                   | 0                   |
| Revenues   | 438  | 4,935                               | 9,882               |
| Increase or Decrease (-) in the Deficit  | -438 | -4,935                              | -9,882              |
| Spending Subject to Appropriation (Outlays)  | 0    | 0                                   | 0                   |
| Statutory pay-as-you-go procedures apply?  | Yes  | <b>Mandate Effects</b>              |                     |
| Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030? | No   | Contains intergovernmental mandate? | No                  |
|  |      | Contains private-sector mandate?    | Yes, Over Threshold |

The bill would

- Impose a new excise tax on nicotine used in vaping and for other purposes, which has been extracted, concentrated, or synthesized, at a rate of \$50.33 per 1,810 milligrams of nicotine
- Make applicable to newly taxable nicotine the same provisions that apply to tobacco products, including packaging requirements; provisions relating to purchase, receipt, possession, or sale; and provisions relating to civil and criminal penalties
- Subject manufacturers of newly taxable nicotine to the same occupational tax and other requirements that currently apply to manufacturers of tobacco products

Estimated budgetary effects would primarily stem from

- The imposition of the new excise tax on nicotine

The Congressional Budget Act of 1974, as amended, stipulates that revenue estimates provided by the staff of the Joint Committee on Taxation (JCT) will be the official estimates for all tax legislation considered by Congress. As such, CBO incorporates those estimates into its cost estimates of the effects of legislation. All of the estimates for the provisions of H.R. 4742 were provided by JCT.

Bill summary: H.R. 4742 would impose a new excise tax on nicotine used in vaping and for other purposes, which has been extracted, concentrated, or synthesized at a rate of the greater of the dollar amount specified for small cigarettes in 26 U.S.C. 5701(b)(1) or \$50.33 per 1,810 milligrams of nicotine. The new tax would not

apply in cases where the manufacturer or importer demonstrates that such nicotine will be used in a product approved by the Food and Drug Administration for sale as a nicotine replacement therapy. The new tax would generally not apply to products already subject to the existing excise tax on tobacco.

H.R. 4742 would also extend existing provisions that apply to tobacco products to taxable nicotine. Those provisions include rules relating to the packaging, purchase, receipt, possession, or sale of tobacco, and provisions relating to civil and criminal penalties. The bill would also subject manufacturers of taxable nicotine to the same occupational tax and other requirements that currently apply to manufacturers of tobacco products.

Estimated Federal cost: The estimated budgetary effect of H.R. 4742 is shown in Table 1.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 4742

|  | By fiscal year, millions of dollars— |        |        |        |        |        |        |      |      |      |               |               |
|--|--------------------------------------|--------|--------|--------|--------|--------|--------|------|------|------|---------------|---------------|
|  | 2020                                 | 2021   | 2022   | 2023   | 2024   | 2025   | 2026   | 2027 | 2028 | 2029 | 2020–<br>2024 | 2020–<br>2029 |
| Estimated Revenues .....                                 | 438                                  | 1,189  | 1,150  | 1,101  | 1,058  | 1,041  | 1,006  | 981  | 967  | 953  | 4,935         | 9,882         |
| Net Decrease (–) in the Deficit From Changes in Revenues |                                      |        |        |        |        |        |        |      |      |      |               |               |
| Effect on the Deficit .....                              | –438                                 | –1,189 | –1,150 | –1,101 | –1,058 | –1,041 | –1,006 | –981 | –967 | –953 | –4,935        | –9,882        |

Sources: Staff of the Joint Committee on Taxation.  
Components may not sum to totals because of rounding.

Basis of estimate: The Congressional Budget Act of 1974, as amended, stipulates that revenue estimates provided by the staff of the Joint Committee on Taxation (JCT) are the official estimates for all tax legislation considered by the Congress. CBO therefore incorporates those estimates into its cost estimates of the effects of legislation. All of the estimates for the provisions of H.R. 4742 were provided by JCT.<sup>1</sup>

Revenues: JCT estimates that enacting H.R. 4742 would increase revenues by \$9.9 billion over the 2020–2029 period.

Uncertainty: These budgetary estimates are uncertain because they rely on underlying projections and other estimates that are uncertain. Specifically, they are based in part on CBO’s economic projections for the next decade under current law, and on estimates of changes in taxpayers’ behavior in response to changes in tax rules.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown above in Table 1.

Increase in long-term deficits: None.

Mandates: JCT has determined that H.R. 4742 would impose no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

JCT has determined that H.R. 4742 would impose private-sector mandates as defined in UMRA by imposing an excise tax on the manufacture or importation of certain nicotine products and by subjecting the manufacturer or importer of such taxable products to the special occupational tax applicable to the manufacturers of tobacco products. JCT estimates that the aggregate direct cost of the mandates would exceed the annual private-sector threshold established in UMRA (\$164 million in 2019, adjusted annually for inflation).

Previous CBO estimate: This estimate supersedes the cost estimate for H.R. 4742 that CBO transmitted on October 31, 2019. This estimate includes a private-sector mandate statement that was missing from the previous estimate, but is otherwise unchanged.

Estimate prepared by: Revenues: Staff of the Joint Committee on Taxation and Bayard Meiser; Mandates: Staff of the Joint Committee on Taxation.

Estimate reviewed by: Joshua Shakin, Chief, Revenue Estimating Unit; Joseph Rosenberg, Deputy Assistant Director for Tax Analysis; John McClelland, Assistant Director for Tax Analysis.

## **V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE**

### **A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS**

With respect to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee

<sup>1</sup>For JCT’s estimates of the provisions, which include detail beyond the summary presented below, see Joint Committee on Taxation, Description of H.R. 4742, To amend the Internal Revenue Code of 1986 to impose a tax on nicotine used in vaping, etc., JCX–44–19 (October 21, 2019) <https://go.usa.gov/xpxm5>.



made findings and recommendations that are reflected in this report.

#### B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives is required.

#### C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4). The Committee has determined that the bill contains two private sector unfunded mandates: (i) it imposes an excise tax on the manufacture or importation of taxable nicotine; and (ii) it subjects manufacturers of taxable nicotine to the occupational tax applicable to manufacturers of tobacco products. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

#### D. APPLICABILITY OF HOUSE RULE XXI, CLAUSE 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, that “It shall not be in order to consider a bill, joint resolution, amendment, or conference report carrying a retroactive Federal income tax rate increase.” The Committee, after careful review, states that the bill does not involve any retroactive Federal income tax rate increase within the meaning of the rule.

#### E. TAX COMPLEXITY ANALYSIS

Section 4022(b) of Pub. L. No. 105-266, the Internal Revenue Service Restructuring and Reform Act of 1998 (the “RRA”), requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code of 1986 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the RRA because the bill contains no provision that amends the Internal Revenue Code of 1986 and has “widespread applicability” to individuals or small businesses within the meaning of the rule.

#### F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not

contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Pub. L. No. 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to section 6104 of title 31, United States Code.

H. HEARINGS

In compliance with Sec. 103(i) of H. Res. 6 (116th Congress) (1) the following hearings were used to develop or consider H.R. 4742:

On October 16, 2019, the Committee on Appropriations held a subcommittee hearing entitled, “E-cigarettes: An Emerging Threat to Public Health.”

On Wednesday, October 16, 2019 the Committee on Energy and Commerce held a subcommittee hearing entitled, “Legislation to Reverse the Youth Tobacco Epidemic.”

On September 24, 2019, the Committee on Oversight and Reform held a subcommittee hearing entitled, “Don’t Vape: Examining the Outbreak of Lung Disease and CDC’s urgent Warning Not to Use E-Cigarettes.”

On July 25, 2019, the Committee on Oversight and Reform held a subcommittee hearing entitled “Examining JUUL’s Role in the Youth Nicotine Epidemic: Part II.”

On July 24, 2019, the Committee on Oversight and Reform held a subcommittee hearing entitled, “ Examining JUUL’s Role in the Youth Nicotine Epidemic: Part I.”

**VI. CHANGES IN EXISTING LAW PROPOSED BY THE BILL**

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**INTERNAL REVENUE CODE OF 1986**

\* \* \* \* \*

**Subtitle E—Alcohol, Tobacco, and Certain  
Other Excise Taxes**

\* \* \* \* \*

**CHAPTER 52—TOBACCO PRODUCTS AND  
CIGARETTE PAPERS AND TUBES**

\* \* \* \* \*

**Subchapter A—DEFINITIONS; RATE AND PAY-  
MENT OF TAX; EXEMPTION FROM TAX; AND  
REFUND AND DRAWBACK OF TAX**

\* \* \* \* \*

**SEC. 5701. RATE OF TAX.**

(a) CIGARS.—On cigars, manufactured in or imported into the United States, there shall be imposed the following taxes:

(1) SMALL CIGARS.—On cigars, weighing not more than 3 pounds per thousand, \$50.33 per thousand;

(2) LARGE CIGARS.—On cigars weighing more than 3 pounds per thousand, a tax equal to 52.75 percent of the price for which sold but not more than 40.26 cents per cigar.

Cigars not exempt from tax under this chapter which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

(b) CIGARETTES.—On cigarettes, manufactured in or imported into the United States, there shall be imposed the following taxes:

(1) SMALL CIGARETTES.—On cigarettes, weighing not more than 3 pounds per thousand, \$50.33 per thousand;

(2) LARGE CIGARETTES.—On cigarettes, weighing more than 3 pounds per thousand, \$105.69 per thousand; except that, if more than 6 1/2 inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 23/4 inches, or fraction thereof, of the length of each as one cigarette.

(c) CIGARETTE PAPERS.—On cigarette papers, manufactured in or imported into the United States, there shall be imposed a tax of 3.15 cents for each 50 papers or fractional part thereof; except that, if cigarette papers measure more than 6 1/2 inches in length, they shall be taxable at the rate prescribed, counting each 23/4 inches, or fraction thereof, of the length of each as one cigarette paper.

(d) CIGARETTE TUBES.—On cigarette tubes, manufactured in or imported into the United States, there shall be imposed a tax of 6.30 cents for each 50 tubes or fractional part thereof, except that if cigarette tubes measure more than 6 1/2 inches in length, they shall be taxable at the rate prescribed, counting each 23/4 inches, or fraction thereof, of the length of each as one cigarette tube.

(e) SMOKELESS TOBACCO.—On smokeless tobacco, manufactured in or imported into the United States, there shall be imposed the following taxes:

(1) SNUFF.—On snuff, \$1.51 per pound and a proportionate tax at the like rate on all fractional parts of a pound.

(2) CHEWING TOBACCO.—On chewing tobacco, 50.33 cents per pound and a proportionate tax at the like rate on all fractional parts of a pound.

(f) PIPE TOBACCO.—On pipe tobacco, manufactured in or imported into the United States, there shall be imposed a tax of

\$2.8311 cents per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

(g) **ROLL-YOUR-OWN TOBACCO.**—On roll-your-own tobacco, manufactured in or imported into the United States, there shall be imposed a tax of \$24.78 per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

(h) **NICOTINE.**—*On taxable nicotine, manufactured in or imported into the United States, there shall be imposed a tax equal to the dollar amount specified in section 5701(b)(1) (or, if greater, \$50.33) per 1,810 milligrams of nicotine (and a proportionate tax at the like rate on any fractional part thereof).*

[(h)] (i) **IMPORTED TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES.**—The taxes imposed by this section on tobacco products and cigarette papers and tubes imported into the United States shall be in addition to any import duties imposed on such articles, unless such import duties are imposed in lieu of internal revenue tax.

**SEC. 5702. DEFINITIONS.**

When used in this chapter—

(a) **CIGAR.**—“Cigar” means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (b)(2)).

(b) **CIGARETTE.**—“Cigarette” means—

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1).

(c) **TOBACCO PRODUCTS.**—“Tobacco products” means cigars, cigarettes, smokeless tobacco, pipe tobacco, [and roll-your-own tobacco] *roll-your-own tobacco, and taxable nicotine.*

(d) **MANUFACTURER OF TOBACCO PRODUCTS.**—“Manufacturer of tobacco products” means any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco, except that such term shall not include—

(1) a person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person’s own personal consumption or use, and

(2) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Such term shall include any person who for commercial purposes makes available for consumer use (including such consumer’s personal consumption or use under paragraph (1)) a machine capable of making cigarettes, cigars, or other tobacco products. A person making such a machine available for consumer use shall be deemed the person making the removal as defined by subsection (j) with respect to any tobacco products manufactured by such machine. A person who sells a machine directly to a consumer at retail for a consumer’s personal home use is not making a machine available for commercial purposes if such machine is not used at a retail premises and is designed to produce tobacco products only in personal use quantities.

(e) CIGARETTE PAPER.—“Cigarette paper” means paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

(f) CIGARETTE TUBE.—“Cigarette tube” means cigarette paper made into a hollow cylinder for use in making cigarettes.

(g) MANUFACTURER OF CIGARETTE PAPERS AND TUBES.—“Manufacturer of cigarette papers and tubes” means any person who manufactures cigarette paper, or makes up cigarette paper into tubes, except for his own personal use or consumption.

(h) EXPORT WAREHOUSE.—“Export warehouse” means a bonded internal revenue warehouse for the storage of tobacco products or cigarette papers or tubes or any processed tobacco, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

(i) EXPORT WAREHOUSE PROPRIETOR.—“Export warehouse proprietor” means any person who operates an export warehouse.

(j) REMOVAL OR REMOVE.—“Removal” or “remove” means the removal of tobacco products or cigarette papers or tubes, or any processed tobacco, from the factory or from internal revenue bond under section 5704, as the Secretary shall by regulation prescribe, or release from customs custody, and shall also include the smuggling or other unlawful importation of such articles into the United States.

(k) IMPORTER.—“Importer” means any person in the United States to whom nontaxpaid tobacco products or cigarette papers or tubes, or any processed tobacco, manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned; any person who removes cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully brings tobacco products or cigarette papers or tubes, or any processed tobacco, into the United States.

(l) DETERMINATION OF PRICE ON CIGARS.—In determining price for purposes of section 5701(a)(2)—

(1) there shall be included any charge incident to placing the article in condition ready for use,

(2) there shall be excluded—

(A) the amount of the tax imposed by this chapter or section 7652, and

(B) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

(3) rules similar to the rules of section 4216(b) shall apply.

(m) DEFINITIONS RELATING TO SMOKELESS TOBACCO.—

(1) SMOKELESS TOBACCO.—The term “smokeless tobacco” means any snuff or chewing tobacco.

(2) SNUFF.—The term “snuff” means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

(3) CHEWING TOBACCO.—The term “chewing tobacco” means any leaf tobacco that is not intended to be smoked.

(n) PIPE TOBACCO.—The term “pipe tobacco” means any tobacco which, because of its appearance, type, packaging, or labeling, is

suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

(o) **ROLL-YOUR-OWN TOBACCO.**—The term “roll-your-own tobacco” means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or for use as wrappers thereof.

(p) **MANUFACTURER OF PROCESSED TOBACCO.**—

(1) **IN GENERAL.**—The term “manufacturer of processed tobacco” means any person who processes any tobacco other than tobacco products.

(2) **PROCESSED TOBACCO.**—The processing of tobacco shall not include the farming or growing of tobacco or the handling of tobacco solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco.

(q) **TAXABLE NICOTINE.**—

(1) **IN GENERAL.**—*Except as otherwise provided in this subsection, the term “taxable nicotine” means any nicotine which has been extracted, concentrated, or synthesized.*

(2) **EXCEPTION FOR FDA-APPROVED NICOTINE REPLACEMENT THERAPIES.**—*Such term shall not include any nicotine if the manufacturer or importer thereof demonstrates to the satisfaction of the Secretary that such nicotine will be used in a product which has been approved by the Food and Drug Administration for sale as a nicotine replacement therapy.*

(3) **COORDINATION WITH TAXATION OF OTHER TOBACCO PRODUCTS.**—*Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco shall not be treated as containing taxable nicotine solely because the nicotine naturally occurring in the tobacco from which such product is manufactured has been concentrated during the ordinary course of manufacturing.*

(r) **MANUFACTURER OF TAXABLE NICOTINE.**—

(1) **IN GENERAL.**—*Any person who extracts, concentrates, or synthesizes nicotine shall be treated as a manufacturer of taxable nicotine (and as manufacturing such taxable nicotine).*

(2) **APPLICATION OF RULES RELATED TO MANUFACTURERS OF TOBACCO PRODUCTS.**—*Any reference to a manufacturer of tobacco products, or to manufacturing tobacco products, shall be treated as including a reference to a manufacturer of taxable nicotine, or to manufacturing taxable nicotine, respectively.*

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## VII. DISSENTING VIEWS

A frequent refrain from Members on the other side of the dais has been that all bills should go through “regular order”; in other words, there should be a hearing record and careful study before moving forward with legislation. We Committee Republicans agree. That is why this committee held over 40 hearings on tax reform before moving forward with the most consequential tax overhaul in a generation. We heard from policy experts and economists, leaders of businesses of all sizes, and other stakeholders. Many of us served on working groups that drilled down into various aspects of tax policy and participated in roundtable discussions. And yet, as we are moving forward this bill that imposes a nearly \$10 billion tax on products we know little about, there is no Ways and Means Committee hearing record to turn to and no subject matter expert to consult.

Clearly, there is bipartisan concern on this Committee about the dangers of vaping, especially among our youth. Many of us are parents. All of us represent communities that have been touched in some way by this issue. And none of us wants to see a single person hurt, injured, or worse by vaping. That is a solid foundation on which to begin a serious discussion about vaping, but this process—or lack thereof—has robbed us of that important discussion. Instead, we are left with very important questions left unanswered. To name a few, is vaping more or less dangerous than more traditional forms of tobacco consumption? By taxing the nicotine content of vaping products, is it possible we will encourage Americans to turn to more health-threatening forms of tobacco consumption, or worse, vaping products that contain dangerous illicit drugs like THC? What unintended consequences might we be creating? Is it possible we will stoke more black market activity with this tax, the kind of activity that has been linked to the most tragic and deadly cases of vaping? And of the 20 jurisdictions that have imposed taxes on vaping products, why have none of them used the standard in this bill of taxing nicotine content by weight?

These are questions that should be answered, and yet the Majority has adopted a “tax first, ask questions later” posture that does little to illuminate the debate or help us design a policy that truly helps the people at risk of vaping-related illnesses.

We do not doubt the sincerity and good intentions of our colleagues who support this tax. However, the fact that the Majority did not even allow the Committee to vote on an amendment by Dr. Ferguson that would have directed the proceeds of the tax to a trust fund for research, treatment, and prevention of vaping-related illnesses was unfortunate and could lead some to believe that the tax is intended merely as a “money grab” rather than a real solution to a serious public health issue.

This Committee should take its constitutional taxing power seriously. Sadly, rushing through a bill with two days' notice and not a single hearing does not serve this Committee, or more importantly, the people we're trying to help. It is time to start over and do this right. This issue is too important for us to do less.

We Committee Republicans are eager to work with our colleagues in a bipartisan way on genuine solutions to this issue. We hope we will still have an opportunity to do just that.

KEVIN BRADY,  
*Republican Leader, Com-  
mittee on Ways and  
Means.*

