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Flaws in a Weight-Based Smokeless Tax System

In Ohio, smokeless tobacco is taxed at a rate of 17% of wholesale price.¹ Efforts to change this system by taxing smokeless tobacco according to weight will lead to problematic results.

A Weight-Based Smokeless Tax System Will Lead to Manipulation of Tobacco Products and Tax Revenue Uncertainty

- A weight-based tax system will encourage manufacturers to manipulate weight-to-nicotine ratios in order to minimize taxes. This could encourage the production of products with higher nicotine levels that are more addictive.
- The emergence of new forms of smokeless tobacco products (such as spit-free snuff and tobacco lozenges) further complicates the implementation and effectiveness of a weight-based smokeless tobacco tax. Such products are light-weight and thus likely to be taxed at a lower level under a weight-based system. It would be imprudent to change the way smokeless tobacco is taxed just as Philip Morris, R.J. Reynolds, and U.S. Smokeless Tobacco are all gearing up to promote their new spit-free “snus” products.
- In order to maintain tax revenue while accounting for inflation, a weight-based tax system would require a great deal of accurate economic foresight or constant revision of the tax rate. Otherwise, the real value of a weight-based tax will decline over the course of time due to inflation.
- The current smokeless tax system self-adjusts with the price of the product, automatically accounting for inflation (and increasing the amount of the tax as the price of the product rises).
- In at least one state, data indicates a decrease in tax revenue due to the state’s transition to a weight-based tax system.²

A Weight-Based Smokeless Tax System Will Lead to Bureaucratic, Logistical and Administrative Difficulties for the Ohio Department of Taxation

- There are numerous forms of smokeless tobacco on the market, and new smokeless tobacco products are being developed.
- Because of the wide variety of tobacco forms, as well as the varying weight-to-nicotine ratios, a legitimate weight-based tax system will require a different tax standard for each and every type of smokeless tobacco product.
- Under the current smokeless tobacco tax system, a wholesaler's compliance can be confirmed by a review of business records (which regularly indicate accurate sales prices). A weight-based tax system does not provide a simple weight-based document trail and would require the government to regularly inspect tobacco products to assure that the reported weights are accurate.

A Weight-Based Smokeless Tax System Will Lead to an Increase in Teenager Consumption of Smokeless Tobacco

- A weight-based tax on smokeless tobacco would decrease the costs of widely popular premium smokeless tobacco brands.
- More than half of smokeless tobacco users between the ages of 12 and 17 use Skoal and Copenhagen, popular premium brands.³ Jointly, these two brands control over 60% of the total United States smokeless tobacco market share.⁴
- A weight-based tax on smokeless tobacco would decrease the costs of widely popular premium smokeless tobacco brands. These premium smokeless tobacco brands would therefore become more attractive and accessible to teenagers.⁵

¹ Ohio Rev. Code Ann. § 5743.51(A).

² See C. Delnevo, M. J. Lewis & J. Foulds, *Taxing Moist Snuff by Weight Ain't Worth Spit*, 16 Tobacco Control 69 (2007).

³ *Id.* See also Office of Applied Studies, U.S. Dep't of Health & Human Servs., *National Household Survey on Drug Abuse* (1999), available at <http://www.oas.samhsa.gov/NHSDA/tobacco/appendixg.htm>.

⁴ Substance Abuse and Mental Health Servs. Admin., *National Survey on Drug Use & Health Codebook Data File: PUF2004_042406* 20, <http://webapp.icpsr.umich.edu/cocoon/SAMHDA-STUDY/04373.xml> (last visited August 20, 2007).

⁵ See C. Delnevo, M. J. Lewis & J. Foulds, *Taxing Moist Snuff by Weight Ain't Worth Spit*, 16 Tobacco Control 69 (2007).