



# Florida Policymakers Should Keep Alternative Tobacco Products Tax-Free

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Aspects of Florida's tobacco and nicotine regulatory regime stand as a model for the rest of the nation. Specifically, the state's tax structure creates a price differential between more harmful products (like traditional cigarettes) and less harmful alternative tobacco products (like vapor, nicotine pouches, and heat-not-burn products). However, opportunities exist for state policymakers to reform and improve the current system.

## The Concept of Harm Reduction in Taxation

Harm reduction is a crucial aspect of sound tobacco and nicotine tax design. Rather than trying to preclude the negative health outcomes associated with certain behaviors via prohibition or excessive taxation, those health outcomes can instead be more practically improved by incentivizing consumption of less harmful alternatives. To that end, alternative tobacco products (ATPs) that are less harmful to consumers,

and less burdensome on public health, should be taxed proportionally less.

ATPs enable nicotine consumption with drastically reduced risk as compared to traditional combustible cigarettes. Innovative products like heat-not-burn tobacco products avoid combustion and smoke inhalation. Electronic nicotine delivery systems (ENDS) and oral nicotine products remove the more harmful chemicals in tobacco entirely. It is important to understand that, while nicotine is the addictive chemical in tobacco, nicotine itself is not carcinogenic.<sup>1</sup> It is the other chemicals in cigarettes and tobacco that cause cancer, which makes ATPs without those chemicals substantially less risky.

The FDA recognizes that some tobacco products can be relatively less harmful than cigarettes and grants modified risk tobacco product (MRTP) orders in those cases, and some states have already established a substantially lower tax rate applied to those MRTPs. These are excellent policies in theory but other actions, sometimes within the same federal agency or bills passed within the same state, undermine the potential for harm reduction.

Despite evidence that vaping is substantially safer than combustible cigarettes, the FDA has failed to authorize most e-cigarette and vaping products and almost no flavored products. The combination of inadequate FDA product authorization, state-implemented flavor bans, and a lack of enforcement of regulations in vaping markets has driven market share to illicit products. Illicit products often don't comply with any US safety or regulatory rules, resulting in products that are substantially

more harmful to consumers.<sup>2</sup>

Failing to tax ATPs appropriately has significant health implications. Higher tax rates on ATPs disincentivize smokers to switch to less harmful alternatives. Most smokers try to quit, but very few successfully do so.<sup>3</sup> Having available a substantially less harmful source of nicotine enables more cessation of smoking traditional combustible cigarettes.<sup>4</sup> A tax hike on vaping from 35 percent to 95 percent in Minnesota, for example, was estimated to have prevented 32,400 people from quitting—and taxing e-cigarettes the same as traditional cigarettes nationwide would prevent more than 2.75 million people from successful cessation over 10 years.<sup>5</sup>

ATPs should be taxed in proportion to the harm they cause to encourage consumers to switch from combustible cigarettes to less harmful products. Previous research identified four primary factors to consider when trying to quantify the relative harm of a particular alternative tobacco product: harm caused, substitutability with combustible cigarettes, ease of mass consumption, and addictiveness.<sup>6</sup>

Harm from tobacco products falls on a continuum of risk from traditional combustible cigarettes being the most dangerous and no consumption of tobacco at all being the safest. Alternative products that are heated instead of burned are less risky than combustible cigarettes; modern oral nicotine products are even less harmful, and transdermal consumption of nicotine may be the safest. Less harmful alternatives should generally be taxed at a lower rate, all else being equal.

To better enable smoking cessation,

products that are more easily substituted for traditional cigarettes should also be taxed relatively less. The more difficulty a consumer would face trying to abuse an alternative tobacco product with mass consumption, the less that product should be taxed.

Finally, products should also be taxed in proportion to their addictiveness. Nicotine is inherently addictive, but some products

may contain so little nicotine as to avoid a certain “addictive threshold.” If an alternative tobacco product is less addictive or not addictive, it should then be taxed relatively less.

The Table below assigns alternative tobacco products to four different categories based on the previously described harm reduction criteria and describes a reduced tax rate for each category.

## Assignment of Alternative Tobacco Products to Harm Reduction Categories

### **Category 1: 50 percent of the tax rate of combustible cigarettes (50 percent tax rate reduction)**

1. **VLN cigarettes:** Just as harmful as combustible cigarettes, insufficient evidence of substitutability; easy to mass consume; possibly not addictive
2. **Loose tobacco:** Just as harmful as combustible cigarettes, insufficient evidence to date of substitutability; more difficult to mass consume; addictive

### **Category 2: 25 percent of the tax rate of combustible cigarettes (75 percent tax rate reduction)**

3. **HTPs:** less harm, insufficient evidence to date of substitutability; easy to mass consume; addictive
4. **Moist tobacco:** less harm, insufficient evidence to date of substitutability; easy to mass consume; addictive

### **Category 3: 10 percent of the tax rate of combustible cigarettes (90 percent tax rate reduction)**

5. **Vapor:** less harm, strong substitute; easy to consume; addictive
6. **Modern oral tobacco (including snuff, snus, and pouches):** much less harm, limited evidence of substitutability; easy to consume; addictive

### **Category 4: 0 percent of the tax rate of combustible cigarettes (100 percent tax rate reduction)**

7. **NRT patches, gums, and lozenges:** little to no harm, mixed evidence of substitutability; easy to consume; addictive, but there is little evidence of mass addiction from these products

If taxes are levied on ATPs, a categorical structure based on the degree of harm associated with the product and the potential to help cigarette smokers switch to a safer alternative is the most appropriate. Lowering the tax burden on safer alternatives helps drive price differentials that incentivize consumers to switch. The principled, scientific approach enables harm reduction, allowing alternative tobacco products to save lives, while generating revenues for public health programs.

### Harm Reduction in Florida

Chapter 210 of Title XIV of the Florida Statutes governs the taxes on tobacco products.<sup>7</sup> The average total tax levied on a pack of 20 cigarettes in the State of Florida is \$1.339, consisting of a 5 cent per cigarette surcharge (\$1.00 per pack of 20 cigarettes) and a 33.9 cent per pack excise tax. The funds from the surcharge are directed to the State Health Care Trust Fund, while the excise tax revenues are directed partially toward health care and research programs and partially deposited into the General Revenue Fund.

Tobacco products that are not cigarettes, like loose tobacco, snuff, and chewing tobacco, are subject to a different surcharge of 60 percent of the wholesale sales price and a tax of 25 percent of the wholesale sales price. Revenues from these taxes are entirely directed to the General Revenue Fund. The State of Florida does not currently levy a tax on nicotine products that do not contain tobacco, like e-cigarettes, vapes, or

modern oral nicotine.

In many ways, the Sunshine State is a shining example for the rest of nation on how to tax ATPs: don't. Most ATPs, like modern oral nicotine, vapes, and heat-not-burn tobacco are not taxed in Florida. These products also do not have harmful second-hand smoke or similar effects that directly harm third parties, so arguably they warrant no tax at all. Not taxing them guarantees that the less harmful alternatives are not so burdened by taxes to discourage smoking cessation and switching to a safer source of nicotine.

There are still ways that Florida can improve its tobacco tax regime, however. The relatively high tax burden on some ATPs like loose tobacco or snuff may prevent smokers from switching to those less harmful alternatives. The tax levied on ATPs is also entirely uncoupled to the cigarette tax and uses an entirely different structure (*ad valorem* instead of *ad quantum*). This undermines the transparency of the relative tax burden

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placed on the two classifications and hinders efforts to calibrate the taxes according to their respective harms.

Most of the cigarette excise tax and all the taxes on other tobacco products are directed to the General Revenue Fund, not dedicated to any specific health program. This is generally unwise for excise taxes, as the tax base is narrow and revenues tend to be too volatile to generate reliable general funds.<sup>8</sup> Cigarette consumption has also been decreasing for decades, eroding the

tax base and causing revenues to fall in both nominal and real terms over time.

Excise tax revenues should instead be dedicated specifically to programs attempting to address the public costs of consumption, which would require proportionally less funds as consumption declines. Reliance on these taxes for general spending may eventually necessitate Florida to tax more tobacco and nicotine products to make up for a steadily eroding tax base.

Taxes on alternative tobacco products should be kept low relative to cigarette taxes to reflect the substantially lower risk associated with their use, allowing a lower tax burden to drive price differentials that encourage smokers to switch from more harmful combustible cigarettes to less harmful alternatives.

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## ENDNOTES

- 1 Brian Erkkila, "Nicotine Harm and Misconceptions," Presentation at 2023 TMA Conference, [https://www.youtube.com/watch?v=dXTEcCV\\_FyE](https://www.youtube.com/watch?v=dXTEcCV_FyE).
- 2 Public Health England, "E-cigarettes around 95% less harmful than tobacco estimates landmark review," Aug. 19, 2015, <https://www.gov.uk/government/news/e-cigarettes-around-95-less-harmful-than-tobacco-estimates-landmark-review>; [Current Vaping Market Challenges | Tax Foundation](#).
- 3 [Smoking Cessation: Fast Facts | Smoking and Tobacco Use | CDC](#).
- 4 Joel L. Nitzkin, "The Case in Favor of E-Cigarettes for Tobacco Harm Reduction," *International Journal of Environmental Research and Public Health* 11:6 (June 2014), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4078589/>; and Pasquale Caponnetto, Davide Campagna, Fabio Cibella, Jaymin B. Morjaria, Massimo Caruso, Cristina Russo, and Riccardo Polosa, "Efficiency and Safety of an electronic cigarette (ECLAT) as Tobacco Cigarettes Substitute: A Prospective 12-Month Randomized Control Design Study," *PLOS One* (Jun. 24, 2013), <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0066317>.
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- 6 Adam Hoffer, "How Should Alternative Tobacco Products be Taxed," Tax Foundation. August 24, 2023. <https://taxfoundation.org/research/all/federal/taxing-alternative-tobacco-products/>.
- 7 [Chapter 210 - 2024 Florida Statutes - The Florida Senate \(flsenate.gov\)](#).
- 8 [Global Excise Tax Policy: Application and Trends | Tax Foundation](#).