

**African American Tobacco Control Leadership Council**  
**American Cancer Society Cancer Action Network**  
**American Heart Association**  
**American Lung Association**  
**American Nurses Association - New York**  
**Campaign for Tobacco-Free Kids**  
**Miss Abbie's Kids**  
**NAACP New York State Conference**  
**New York Chapter American College of Physicians Services**  
**New York School-Based Health Alliance**  
**New York State Academy of Family Physicians**  
**New York State American Academy of Pediatrics (District II)**  
**New York State Parent Teacher Association**  
**New York State Public Health Association**  
**New York State Radiological Society**  
**Parents Against Vaping (PAVe)**  
**Roswell Park Comprehensive Cancer Center**  
**Stan Martin Consulting, LLC**

**JOINT MEMO IN OPPOSITION**

**S.4527-B, Comrie/ A.4619-B, Solages, *Amendments Requested***

**The above-listed organizations strongly oppose legislation S.4527-B (Comrie)/ A.4619-B (Solages) that would reduce the cost of vapor products sold in New York State (NYS), making them more appealing and accessible especially to youth. It would also significantly reduce tax revenues collected by NYS, by approximately \$20 million annually, and NYS would subsequently have one of the lowest taxable rates in the country compared to other states that levy wholesale taxes on e-cigarettes.**

Currently, vapor products are subject to a 20% sales tax at the retail level. This legislation would shift tax collection to the wholesale level and as written, reduce the rate to \$0.32 cents per milliliter for closed systems and 8% of wholesale for any other product. **This would result in NYS forfeiting as much as five-sixths of the revenue currently generated from vapor product taxation.** Further, as shown in the table below, the volume-based tax favors products with a higher concentration of nicotine, thus incentivizing manufacturers to sell them and consumers to use them.

| <b>Closed System Product</b>   | <b>Tax paid under 20% of retail (current system)</b> | <b>Tax paid @ 32 cents per MI (per S.4527-B/ A.4619-B)</b> | <b>Tax revenue lost per product</b> |
|--|--|--|-------------------------------------|
| Blu Gold Leaf Tobacco Liquipods, 2.4% nicotine (2 pods/pack, each 1.5 mL capacity)<br><i>\$11.99 retail, \$5.01 est. wholesale</i> | \$2.40   | \$0.96   | <b>\$1.44 loss</b>                  |
| Juul Pods, 5% nicotine (4 pods/pack, each 0.7 mL capacity)<br><i>\$21.49 retail, \$8.98 est. wholesale</i>                         | \$4.30   | \$0.90   | <b>\$3.40 loss</b>                  |
| Blue Raz Ice RAZ TN9000 Disposable, 5% nicotine (9.5 mL capacity)<br><i>\$32.99 retail, \$13.79 est. wholesale</i>                 | \$6.60   | \$3.04   | <b>\$3.56 loss</b>                  |

Concerningly, due to well-established [research findings](#), we can expect that this reduction in price will encourage greater use of vapor products, particularly among young people as they are highly sensitive to price. Additionally, New York’s 2020 ban on the sale of flavored vaping products is not having the intended impact. Our organizations have collectively been dedicated to addressing this; however, retailer evasion of the law remains rampant and over a third of e-cigarette sales in NYS are illegal flavored products. **Considering this, NYS must be doing everything possible across the board to make it more difficult for youth to access e-cigarettes and this measure would directly work against this effort.**

We appreciate that this legislation would shift tax collection to the wholesale level and reduce tax avoidance by involving the State Tax Department in enforcement, as there are thousands of registered tobacco/vape retailers in NYS and the current tax structure has greatly contributed to continued illicit flavored vape sales. **However, it is unacceptable that this bill would dramatically lower the tax rate on all vapor products; any restructuring should maintain tax parity and the rate in the bill must be equalized with what currently exists.**

To that end, **we respectfully request that the bill language be amended to eliminate the volume-based tax** to adequately account for nicotine concentration; also, every other tobacco product in NYS, now including nicotine pouches, is taxed as a percentage of the wholesale price. **Additionally, to keep the tax rate on all vapor products the same as the retail rate now, the tax rate should be increased to be at 48% of the wholesale price**, as evidenced below. Even with this amendment, the vapor product rate would remain lower than other tobacco products being taxed at 75% of the wholesale.

| <b>All Other Products</b>   | <b>Tax paid under 20% of retail (current system)</b> | <b>Tax paid @ 8% of wholesale (per S.4527-B/ A.4619-B)</b> | <b>Tax revenue lost per product</b> | <b>Tax paid @ 48% of wholesale (recommended for current tax parity)</b> |
|---|--|--|-------------------------------------|---|
| Uwell Caliburn G3 Pro Vape Kit (includes device and one refillable pod)<br><i>\$50 retail, \$20.90 est. wholesale</i> | \$10.00  | \$1.67   | <b>\$8.33 loss</b>                  | \$10.03   |
| Juice Head E-Liquid Peach Pear 6mg<br><i>\$25 retail, \$10.45 est. wholesale</i>                                      | \$5.00   | \$0.84   | <b>\$4.16 loss</b>                  | \$5.02  |

**We strongly oppose this legislation as written and urge that it be amended to preserve NYS tax collections and prioritize and protect the public health of New Yorkers, especially our young people, over the profits of the tobacco industry.**