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New York State Legislature
Joint Legislative Budget Hearing on Taxes
Testimony on the Proposed Nicotine Pouch Tax
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Chair Krueger, Chair Pretlow, and distinguished members of the Legislature,

Thank you for the opportunity to submit testimony on Gov. Kathy Hochul's proposed 75 percent wholesale tax on nicotine pouches included in the State Fiscal Year 2026–27 Executive Budget. My name is Guy Bentley, and I am the director of consumer freedom at Reason Foundation, a 501(c)(3) nonprofit think tank. The Consumer Freedom Project analyzes and promotes policy solutions that improve public health while avoiding unintended consequences and protecting consumer choice.

I appreciate the opportunity to share our concerns about the proposed tax on nicotine pouches. As I will outline below, this proposal would undermine public health and disproportionately harm low-income New Yorkers.

Nicotine pouches and their risks relative to cigarettes

Smoking kills about 30,000 adult New Yorkers every year and remains the leading cause of preventable death in the state.¹ Many smokers in the Empire State wish to quit cigarettes but find products like nicotine patches and gums, which have a 90 percent failure rate, unsatisfying, and therefore continue to smoke.² Over the past 15 years, a variety of alternatives, including nicotine pouches, have come to market. These products deliver the nicotine smokers want without the smoke that may kill them.

Making these products available to smokers who wish to quit is part of the Food and Drug Administration's (FDA) strategy for reducing the harms of smoking. The FDA recognizes there is a "continuum of risk" when it comes to tobacco and nicotine products, with cigarettes being the most dangerous and alternatives such as e-cigarettes, smokeless tobacco, nicotine pouches, and heated tobacco products being less dangerous.³ When the FDA authorizes a new tobacco or nicotine product for sale, it must be evaluated as to whether it is "appropriate for the protection of public health," meaning the product must provide a net benefit to public health.

In January 2025, the FDA authorized 20 ZYN nicotine pouch products through the premarket tobacco product application pathway, finding them to be appropriate for the protection of public

¹ New York State Department of Health. "Cigarette Smoking and Secondhand Smoke." February 2026. https://health.ny.gov/prevention/tobacco_control/

² Hartmann-Boyce, J., et al. "Nicotine Replacement Therapy Versus Control for Smoking Cessation." Cochrane Database of Systematic Reviews. Issue 5, Art. No.: CD000146. 2018. <https://pubmed.ncbi.nlm.nih.gov/29852054/>

³ U.S. Food and Drug Administration. "FDA Announces Comprehensive Regulatory Plan to Shift Trajectory of Tobacco-Related Disease, Death." July 2017. <https://www.consultant360.com/exclusives/fda-announces-new-nicotine-focused-plans-tobacco-regulation>

health.⁴ Nicotine pouches contain no tobacco and produce no smoke. Users place a small pouch between their lip and gum, receiving the nicotine they want without the tar and carcinogens that make cigarettes deadly. Nicotine is addictive, but it is not what kills smokers—the combustion is what kills.

Gov. Hochul’s budget director has described nicotine pouches and cigarettes as a “distinction without a difference.” Nothing could be further from the truth. Treating these products as equivalent for purposes of tax policy ignores the scientific consensus on the relative risks of nicotine products and contradicts the FDA’s own regulatory framework.

Risk misperceptions and the case against higher taxes

Unfortunately, many people are unaware that nicotine pouches are substantially safer than cigarettes. In 2023, writing in the journal *Addiction*, then-Director of the FDA’s Center for Tobacco Products Brian King expressed concern about misperceptions among the public regarding the relative safety of tobacco and nicotine products, noting that opportunities exist to better educate adult smokers about relative risks.⁵

Imposing a 75 percent wholesale tax on nicotine pouches—making them nearly as expensive as a pack of cigarettes—would reinforce these dangerous misperceptions. When a product is taxed at the same rate as cigarettes, consumers reasonably infer that the government views it as equally dangerous. This sends precisely the wrong signal to the 1.4 million New Yorkers who still smoke.

Empirical effects of taxing safer nicotine alternatives

There is substantial economic literature on the effects of taxing safer nicotine alternatives. Because these products are substitutes for cigarettes, higher taxes on alternatives serve to disincentivize smokers from switching. An analysis of Minnesota’s 95 percent wholesale tax on e-cigarettes found there were 32,400 additional smokers in the state because of the tax.⁶ A separate analysis focusing on young adults aged 18–25 found e-cigarette taxes were associated with reduced vaping but were similarly associated with increases in smoking. These effects are also seen in youth aged 18 or younger, with the authors concluding that the unintended effects of taxation may considerably undercut or even outweigh any public health gains.⁷

Research further demonstrates that for every e-cigarette pod eliminated by a tax, 1.9 extra cigarette packs are sold.⁸ The same substitution effects will apply to nicotine pouches. If New

⁴ U.S. Food and Drug Administration. “FDA Authorizes Certain Tobacco-Free Nicotine Pouches Through Premarket Tobacco Product Application Pathway.” January 2025. <https://www.fda.gov/news-events/press-announcements/fda-authorizes-marketing-20-zyn-nicotine-pouch-products-after-extensive-scientific-review>

⁵ King, B. A., & Toll, B. A. “Commentary on Wackowski et al.: Opportunities and Considerations for Addressing Misperceptions About the Relative Risks of Tobacco Products among Adult Smokers.” *Addiction*. August 2023. <https://onlinelibrary.wiley.com/doi/full/10.1111/add.16296>

⁶ Saffer H, Dench D, Grossman M, Dave D. “E-Cigarettes and Adult Smoking: Evidence from Minnesota.” *Journal of Risk Uncertainty*. June 2020. <https://pubmed.ncbi.nlm.nih.gov/32943812/>

⁷ Abouk R, Courtemanche C, Dave D, Feng B, Friedman AS, Maclean JC, Pesko MF, Sabia JJ, Safford S. “Intended and unintended effects of e-cigarette taxes on youth tobacco use.” *Journal of Health Economics*. January 2023. <https://www.sciencedirect.com/science/article/abs/pii/S0167629622001345>

⁸ Cotti C, Courtemanche C, Maclean JC, Nesson E, Pesko MF, Tefft N. “The effects of e-cigarette taxes on e-cigarette prices and tobacco product sales: Evidence from retail panel data.” *Journal of Health Economics*. September 2022. <https://pubmed.ncbi.nlm.nih.gov/36103752/>

York makes nicotine pouches as expensive as cigarettes, many price-sensitive smokers will stick with the deadlier option.

A regressive tax that harms those who need help most

Smoking rates are highest among low-income and non-college-educated households—those who would benefit most from cost-effective alternatives to cigarettes. In New York City, a pack-a-day habit can cost around \$5,000 annually. Switching to nicotine pouches could save smokers thousands of dollars while eliminating virtually all their smoking-related health risks. That is a powerful incentive for smokers trying to improve their health.

If Gov. Hochul's tax passes, that price advantage would narrow considerably. Some smokers would stick with cigarettes. Others who are transitioning from smoking to pouches would find it more expensive, decide it is no longer worth it, and relapse to smoking. This is the predictable consequence of treating unequal risks equally in the tax code.

Youth use is at historic lows

It is important to note that youth tobacco use is at a historic low. When the FDA authorized ZYN for protection of public health last year, it weighed the risk of underage use and, after careful consideration, determined the product was not sufficiently appealing to have widespread uptake among minors. Fewer than three percent of high school seniors reported current nicotine pouch use in the latest National Youth Tobacco Survey, and three percent of students had used a pouch in the New York Youth Tobacco Survey, despite ZYN having been sold for more than 10 years.

Rather than imposing new taxes, the legislature could make better use of the roughly \$1 billion in existing tobacco tax revenue to strengthen enforcement of retailer compliance and prevention programs, ensuring New York's youth tobacco use remains among the lowest in the nation.

Conclusion

A fundamental principle of sound tobacco and nicotine tax policy is that less dangerous products should be taxed substantially lower than the most dangerous products. This approach incentivizes smokers to switch to safer alternatives, improves public health outcomes, and avoids the perverse consequences of making safer products as expensive as deadly ones. If the legislature determines that some tax on nicotine pouches is necessary, the rate should be set well below the tax on combustible cigarettes to maintain a meaningful price differential that encourages smokers to switch. New York already has the highest cigarette tax in the country, a ban on menthol cigarettes, and a raft of other anti-smoking policies. Despite all this, smoking remains the leading cause of preventable death in the state. New York's policies should encourage safer alternatives to cigarettes, not penalize them.

Thank you for your time.

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