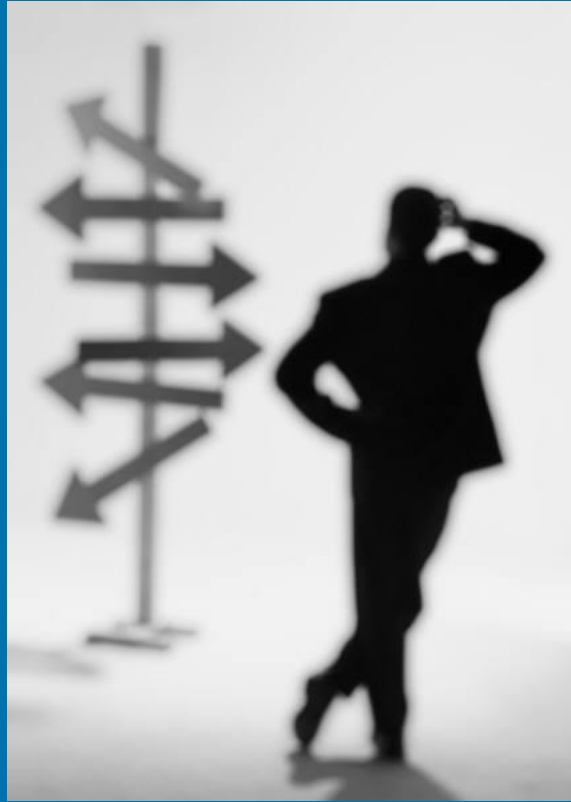


# Taxation of e-cigarettes: Where are we today?



Mark Meaney, J.D., M.A.  
January 22, 2015

# The Tobacco Control Legal Consortium

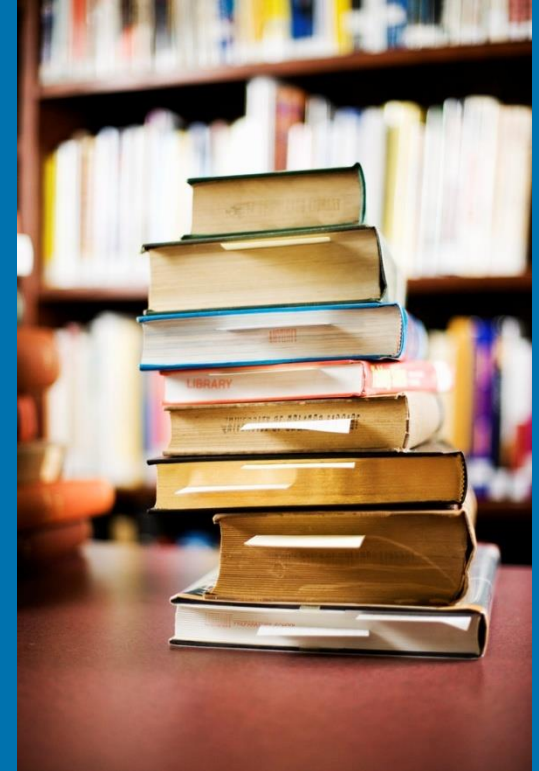
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A national legal network  
supporting tobacco control policy  
change.

# What We Do:

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1. Legal research, analysis, and interpretation
2. Policy development
3. Litigation support
4. Education and training



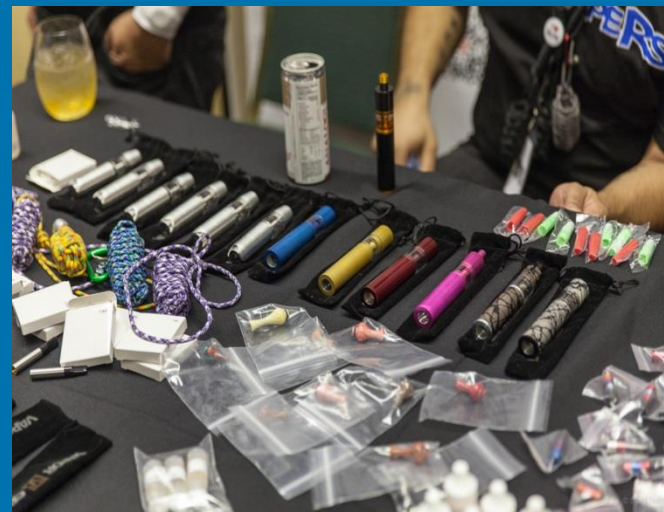
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# Cutting edge technology...

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# ...to here



# The Family Smoking Prevention and Tobacco Control Act

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FDA cannot:

- Prohibit the use of tobacco products
- Prohibit the sale of an entire class of tobacco product
- Prohibit the sale of tobacco products in a specific category of retail outlets
- Require a prescription for tobacco products
- Levy taxes on tobacco products
- Raise the minimum purchase age of tobacco products

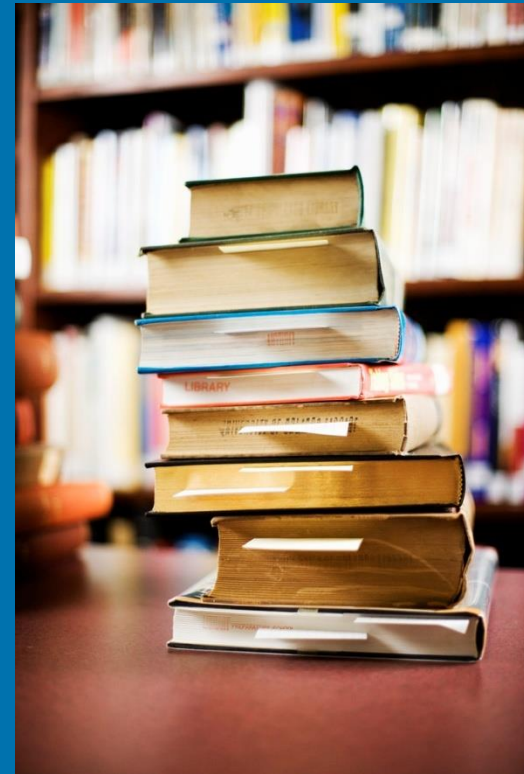




# Baseline Questions

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1. Why tax?
2. Which products should be taxed?
3. Where should tax be levied?
4. What is the appropriate level of taxation?
5. How is the tax enforced?



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# Why tax e-cigarettes?

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- General love of taxes?
- Discourage initiation/use?
- Revenue generation?
- Combination – revenue /incentive to switch or quit/ disincentive to start?





# Which products?

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- Which products should be subject to the tax?
  - E-juice – all or only nicotine?
  - Device
  - Components/parts



# Product definitions

- Clear definition of what is being taxed is essential
- Define as “tobacco products”



# What is the appropriate level of taxation?

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- Tax them as tobacco products
- Create differential between e-cigarettes and all tobacco products or just combustible
- Leave subject to retail sales tax



# How should tax be structured?

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- Options
  - Ad valorem - % of price
  - Product specific
    - Per milliliter of e-juice
    - Per milligram of nicotine
  - Where collected?
    - Wholesaler?
    - Retailer?



# Key definitions

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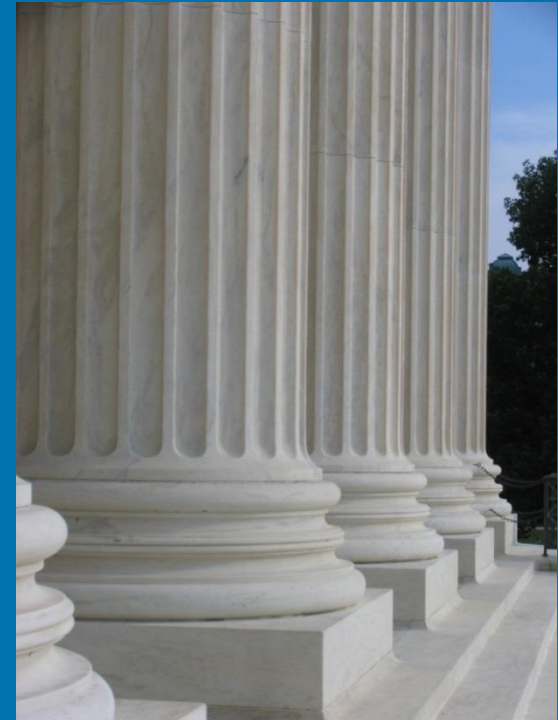
- Existing framework – retailer, distributor, wholesaler
- “Manufacturer means any person who manufactures and sells cigarettes or tobacco products.”
  - Who does this include?



# Plan for enforcement?

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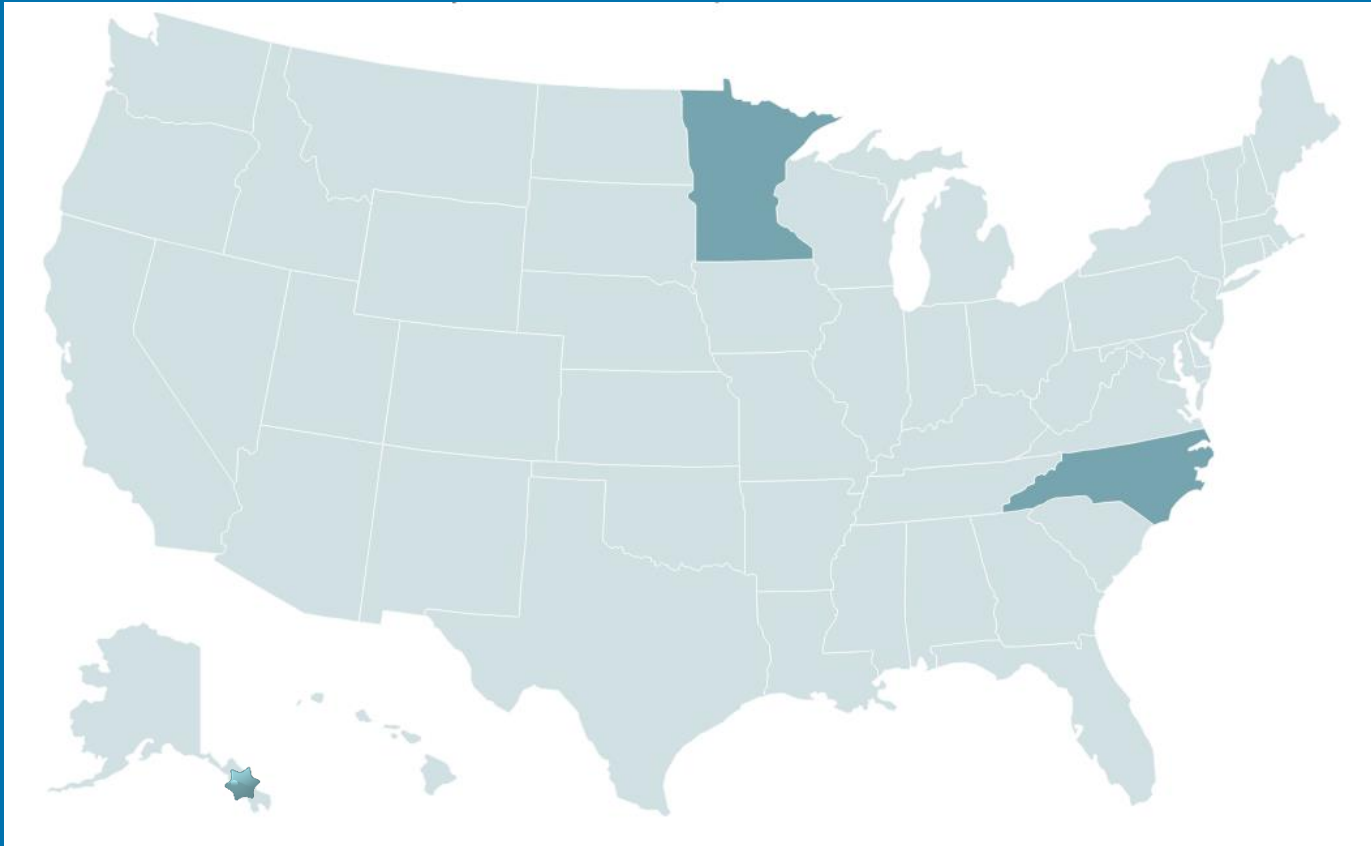
- Key areas
  - Effective licensing
  - Burden of proof
  - Laboratory for testing
  - Internet sales





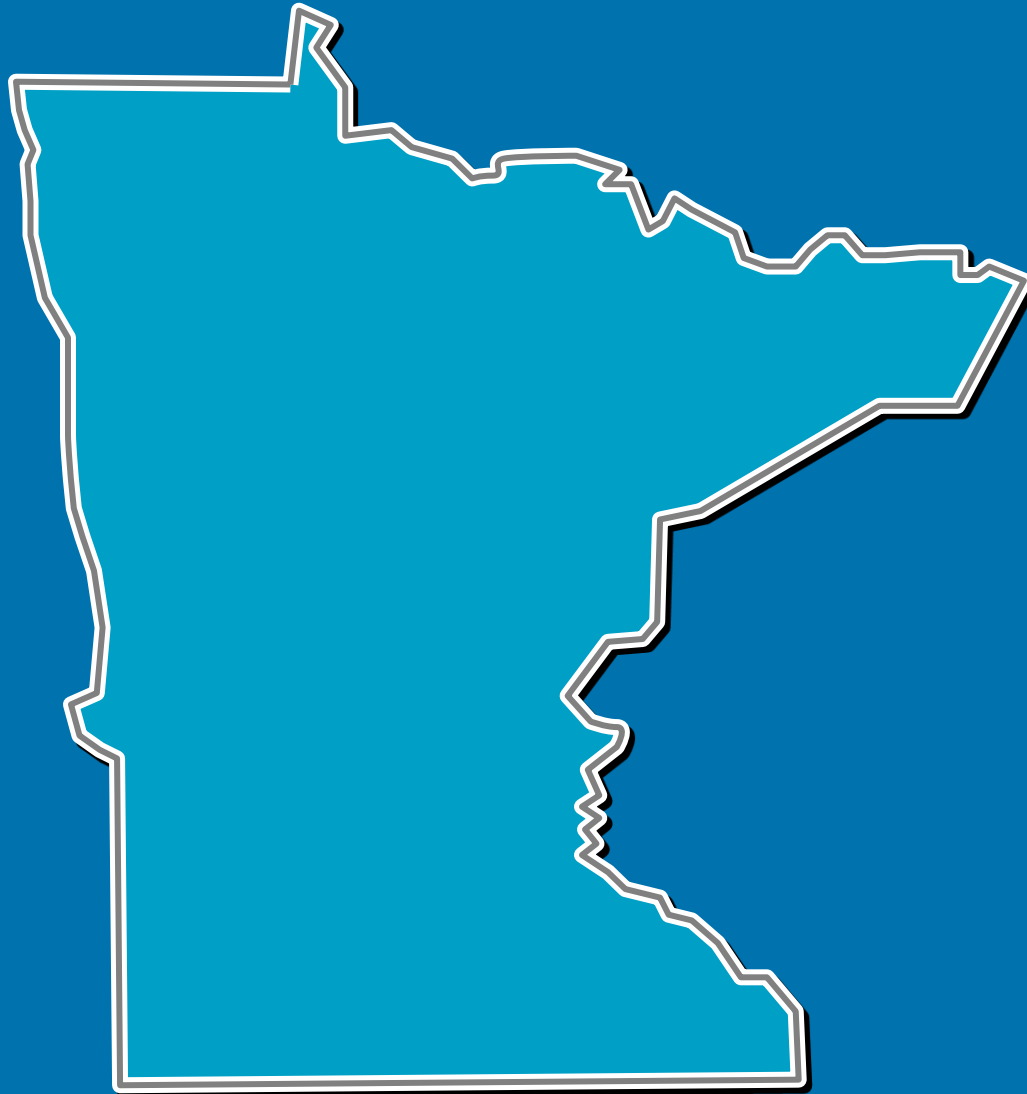
# Current E-Cigarette Tax Landscape

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# Minnesota

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# Minnesota

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Tobacco Products definition: **any product containing, made, or derived from tobacco that is intended for human consumption**, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

Minnesota Statutes, Section 297F.01, subd. 19



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# Minnesota

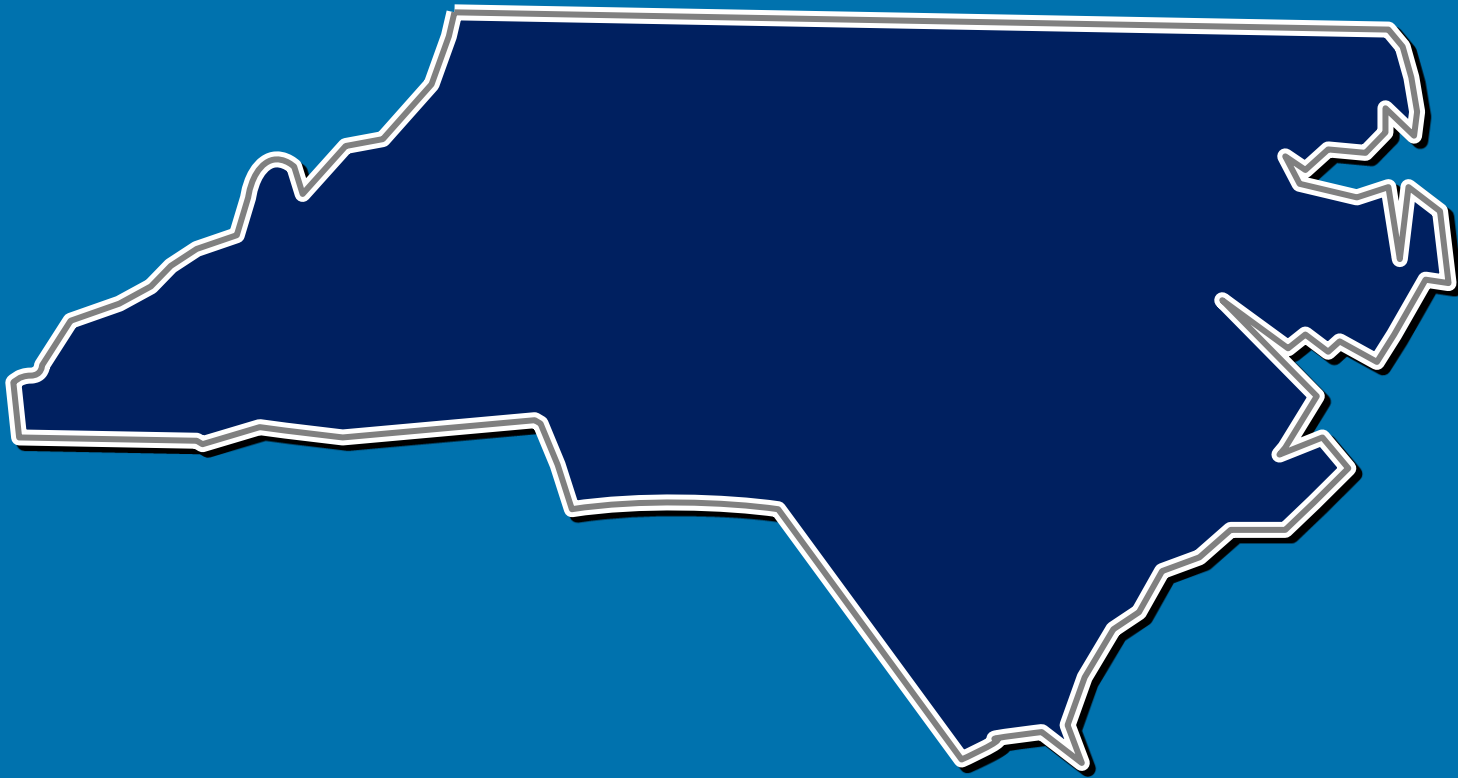
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- Tax on e-juice, dissolvables and kits that contain e-juice – only those that contain nicotine
- Collected by authorized distributors, retailers or consumers



# North Carolina

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# North Carolina

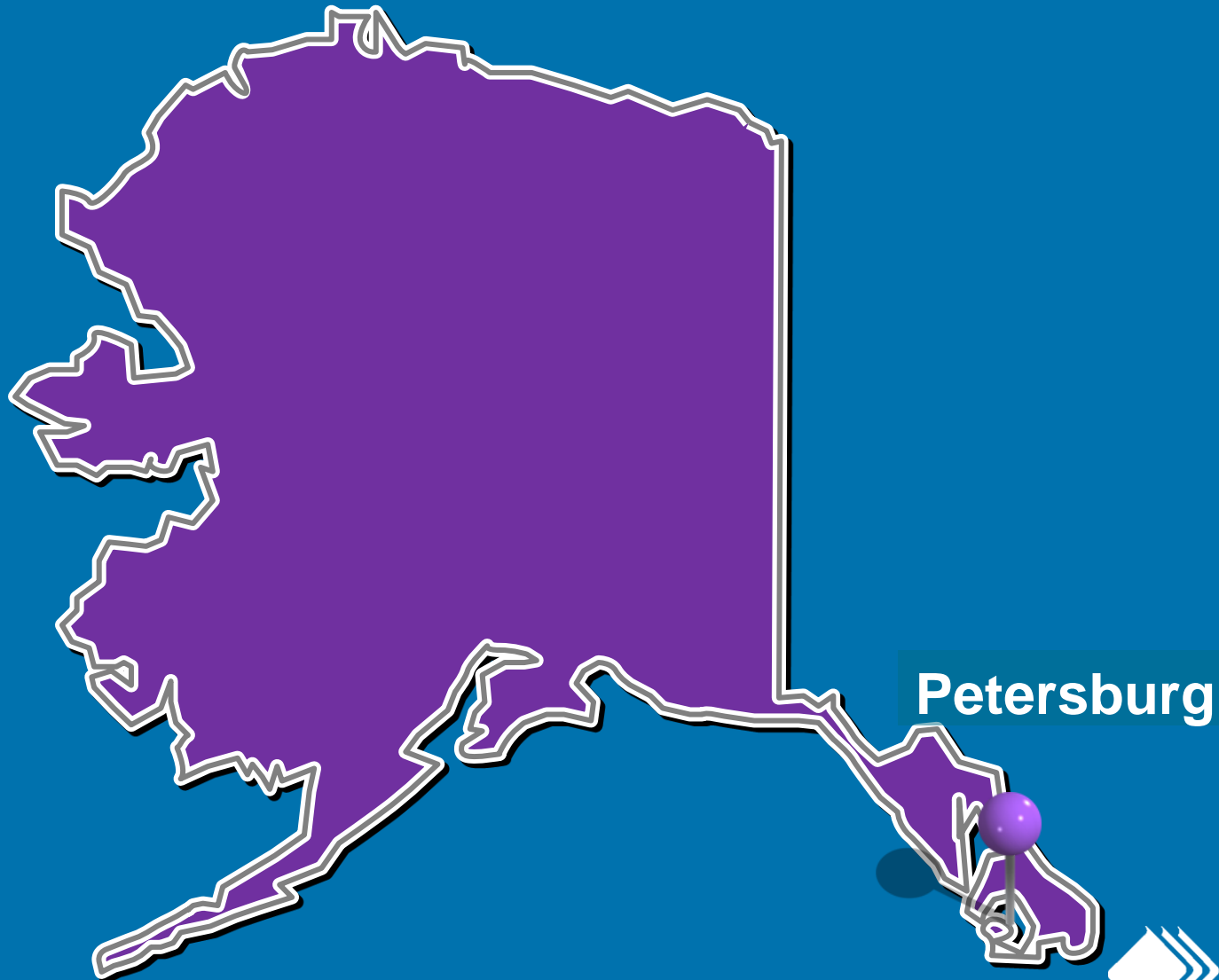
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- Adopted in 2014
- 5 cents per milliliter of “consumable product”
- Enforcement is unclear



# Alaska

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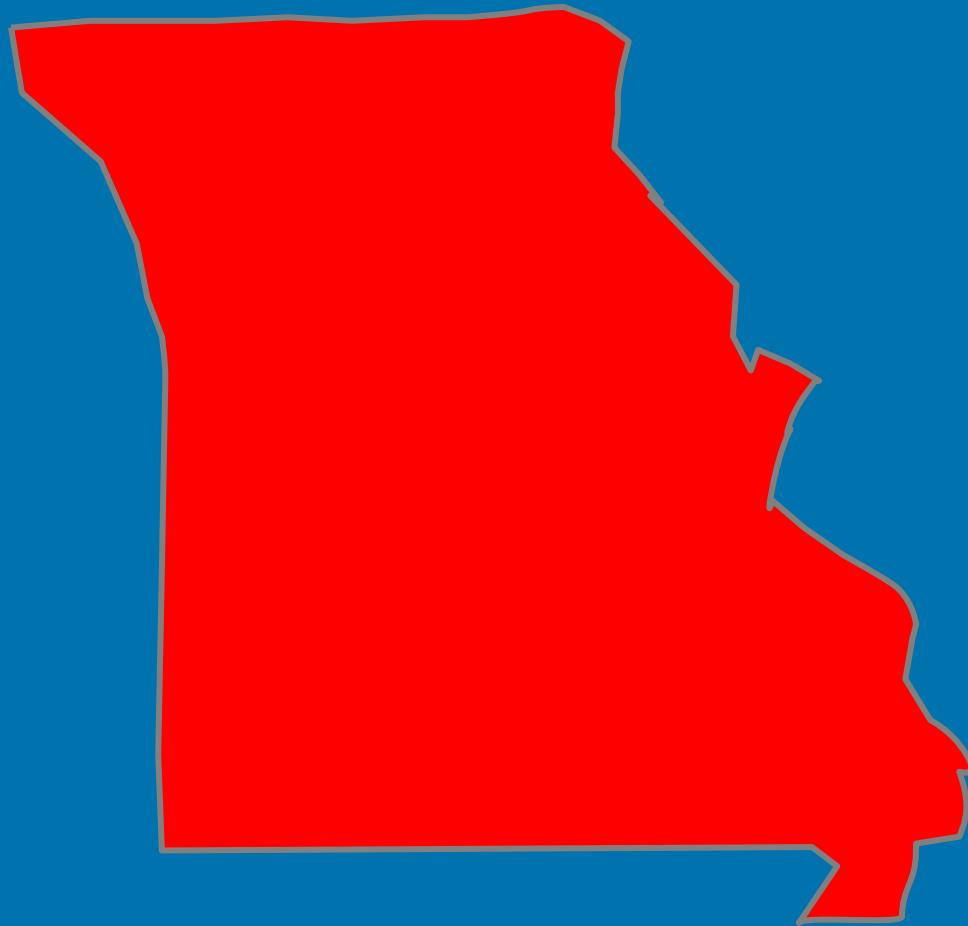
# Petersburg, AK

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- Adopted in 2014
- 45% of wholesale price of e-juice and kits

# Missouri

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# Missouri Preemption

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“Alternative nicotine products and vapor products shall only be sold to persons eighteen years of age or older, shall be subject to local and state sales tax, but shall not be otherwise taxed or regulated as tobacco products.”

Missouri Statutes, Section 407.926.1



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## **THE WALL STREET JOURNAL.**

### **New Jersey E-cigarettes Tax Plan Has Some Fuming**

Posted: June 10, 2014 10:11 p.m. ET

## **The Salt Lake Tribune**

### **Governor Herbert wants to tax e-cigarette sales in Utah, bring in \$10M**

Posted: Dec 13 2014 08:00AM • Last Updated Dec 24 2014 03:33 pm

## COLUMBUS **BUSINESS FIRST**

### **E-cigarette entrepreneurs say 49 percent tax proposed in Kasich's budget would cripple growing industry**

Posted: June 3, 2014 11:17 a.m. EDT | Updated: June 3,, 2014 11:58 a.m.,



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# New Jersey

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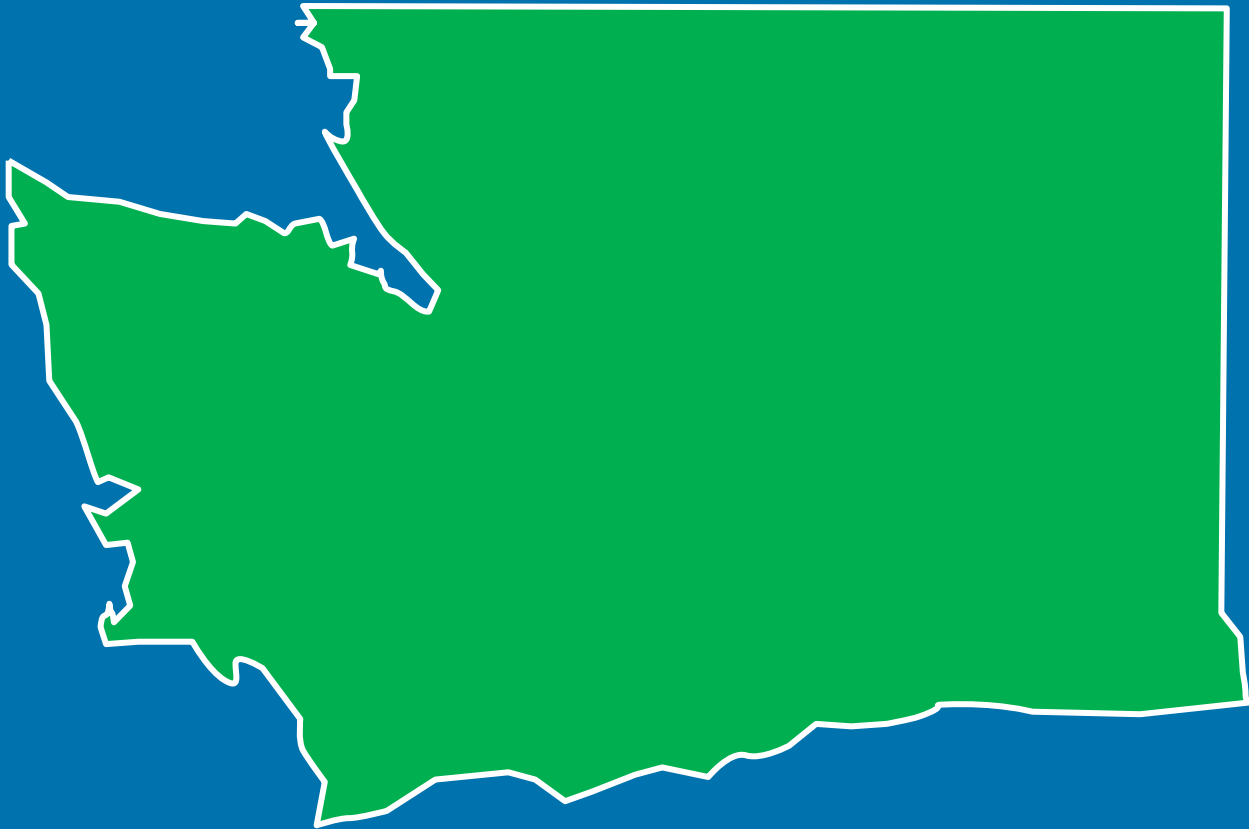
# New Jersey (did not pass in 2014)

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- 2014 Senate Bill
- 75% of wholesale price
- Parts and components included
- New York has similar bill pre-filed in 2015

# Washington

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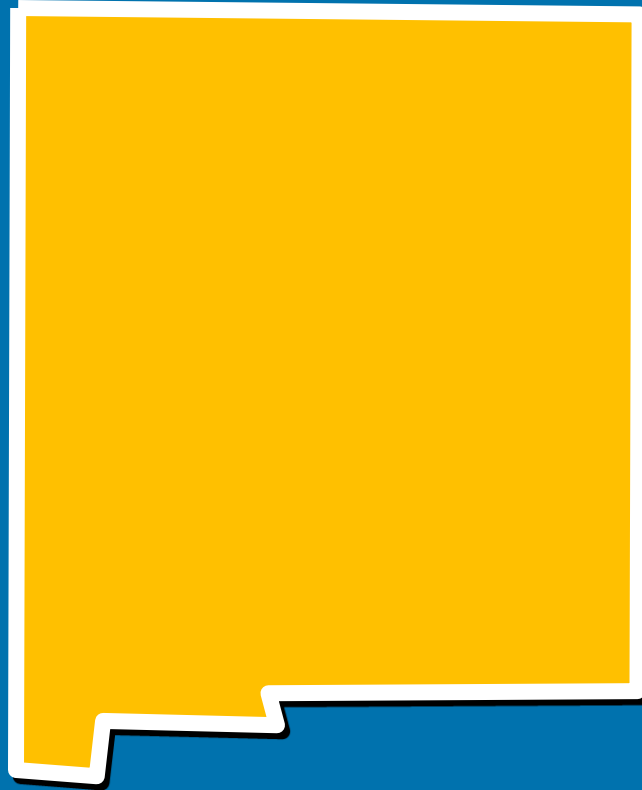
# Washington (budget proposal)

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- Governor's budget
- Defined as “vapor products”
- Would appear to tax e-juice, device and all components at 95%

# New Mexico

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# New Mexico (proposed)

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- Proposal
- 4 cents per milligram of nicotine contained in the “nicotine product”
- Enforcement?

# Virginia

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# Virginia (proposed)

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- 40 cents per milliliter of consumable product
- “Any county, city, or town that had the authority...to impose a tax upon the sale or use of cigarettes may by ordinance impose a tax on the sale or use of a vapor product. The tax shall be based upon the per milliliter content of consumable product in the vapor product at a rate and on such terms as determined by the governing body of the county, city, or town.”



# International Taxation

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Not a lot of activity internationally yet.



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# International Taxation



# United Kingdom

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- 20% Value Added Tax
- Can apply to the UK's Medicines and Healthcare Products Regulatory Agency (MHRA) for medicine license.
- Voke and others to follow

Source: <http://www.pharmaceutical-journal.com/news-and-analysis/news/big-tobaccos-nicotine-inhaler-approved-by-uk-regulator/20066466.article>

# International Taxation



# Italy

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- Proposed a 58.5% tax on the cost of sale of e-cigarettes
- Followed up with a differential taxation proposal – an equivalence approach
  - Puff for puff



# International Taxation



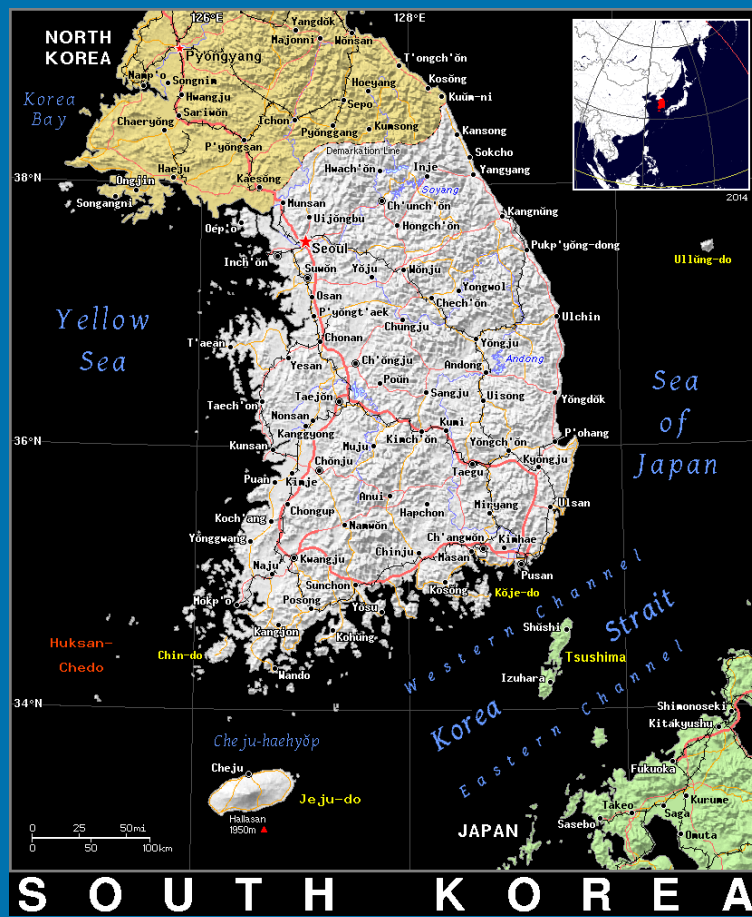
# Portugal

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- Proposal included in 2015 budget
- Include e-cigarettes on list of taxable tobacco products – along with snuff and chewing tobacco
- Suggested rate is about 70 cents/ml



# International Taxation



# South Korea

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- Tax of approximately 40 cents/ml of e-juice
- Additional “education tax” of about 20 cents/ml
- Suggested rate is 60 cents/ml for e-juice that is imported

# Learning Lessons: E-Cigarette Taxes

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1. Build a robust, state-specific evidence base in support
2. Anticipate opposition arguments; prepare data-driven responses
3. Consult an attorney early in the drafting process
  - Each state's tax code is different; legislation must “fit”
  - Definitions are critical
  - Concise language
4. Develop a plan with enforcement folks
  - Robust enforcement options; well-planned implementation
  - Testing and verification of claims
5. Local taxing authority? → watch for preemption provisions

# Contact Us:

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(651) 695-7642