



**COUNTER TOBACCO.ORG** **ChangeLab Solutions**

**Retail Regulations:  
Addressing Electronic Smoking Devices  
at the Point of Sale**



Recorded on September 25, 2015

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**Katie Byerly**

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**COUNTER TOBACCO.ORG**

RETAIL TOBACCO & HEALTH | POLICY SOLUTIONS | RESOURCES & TOOLS | MEDIA GALLERIES | NEWS | ABOUT US | SEARCH

A RESOURCE FOR LOCAL, STATE, AND FEDERAL ORGANIZATIONS WORKING TO COUNTERACT TOBACCO PRODUCT SALES AND MARKETING AT THE POINT OF SALE.

**WAR IN THE STORE**  
The 'War in the Store'  
A 'War in the Store' related twenty years ago and

**POLICY SOLUTIONS**  
Licensing and Zoning

**NEWS**  
8/01/2014  
CDC Report Breaks Down Cigar Type Use

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## Welcome!



Jessica Eaddy, MPH  
CounterTobacco.org's  
New Project Director  
and Managing Editor

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## What's in a Name?



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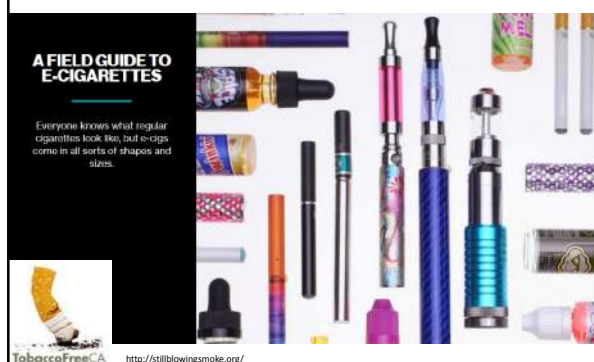
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## What's in a Name?



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### Availability



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### POLL

What is your state or community doing to regulate e-cigarettes at the point of sale?

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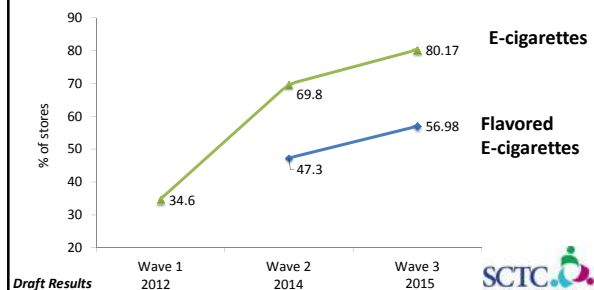
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### Availability

Percentage of stores selling e-cigarettes more than doubled from 2012 to 2015



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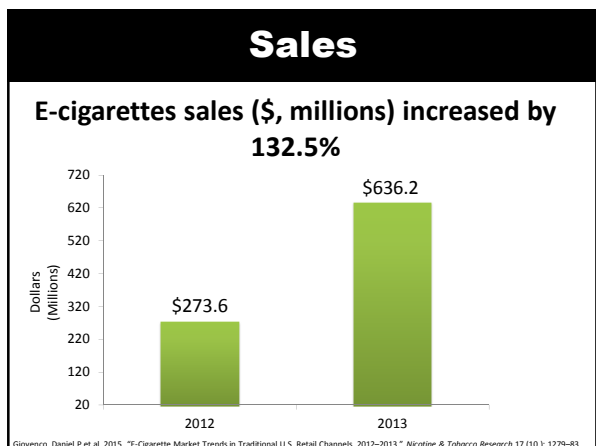
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## Industry Targeting

CAMPAIGN  
for  
TOBACCO-FREE  
Kids!

### TOBACCO UNFILTERED

7 Ways E-Cigarette Companies Are Copying Big Tobacco's Playbook  
(or 7 reasons FDA should quickly regulate e-cigarettes)

Posted by Editor | Oct 2, 2012

E-Cigarette Ad

Cigarette Ad >>

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## Industry Targeting

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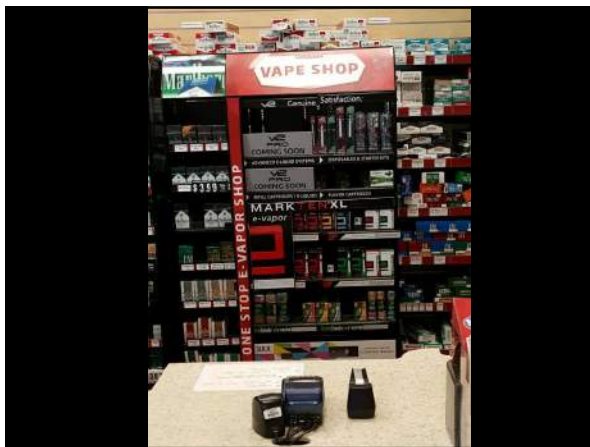
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## Industry Targeting

THE PREMIUM ELECTRONIC CIGARETTE

# NJOY

PRODUCTS | POINT OF SALE | MANAGEMENT | CONTACT | SUPPORT | NJOY.COM

Check out how well this spinner is placed!



"NJOY is very well positioned to compete with traditional tobacco and e-cigarettes, with its game-changing new King product, and should continue to drive growth in the e-cigarette category."  
- Bonnie Herzog, Wells Fargo

"NJOY is the most popular e-cig out there... Smoking a King -- oh, holy hell! yes this is what all e-cigs should be! -- a star, ranked #1!"  
- Mario Aguilan, Gizmodo.com



<http://www.countertobacco.org/news/2014/09/12/njoy-brags-about-e-cigarette-placement-among-candy>

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## Industry Targeting

Check out how well this spinner is placed!

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## Retail Tobacco and Health

**The Industry Spends \$1 Million/ Hour**

On cigarette and smokeless tobacco advertising and promotion at the point of sale

**ATTRACT NEW SMOKERS**

**SUSTAIN CURRENT SMOKERS**

**PREVENT QUITTING & PROMOTE RELAPSE**

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## Health: Reduced Harm?

The Opinion Pages | EDITORIAL

### Clashing Views on E-Cigarettes

By THE EDITORIAL BOARD | AUG. 21, 2014

The New York Times

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Los Angeles Times

### Jury is out on health effects of e-cigarettes

By MICHAEL WISNIO

PUBLISHED 10:27A. 8/21/14

**E**lectronic cigarettes are either a potent weapon in the war against tobacco, or they are another threat to get kids hooked on nicotine and under standing societal norms. There are health experts who back each point of view. But they do agree that the regulatory battle that is now in progress will not be in for several years.

“There are a few studies out there right now, but something like to have a guideline,” said Stuart, professor of medicine and director of the Center for Tobacco Control at UCSF San Francisco, the gateway issue.

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## Health: Aerosols

### Are E-cigarettes Safer? New Study Says Vapors Trigger Lung Cell Stress

Daily Charge! Feb 15, 2015 07:51 PM EST

Facebook | LinkedIn | Twitter | Google+ | Print | Email

Amidst the debate on whether e-cigarettes help people quit smoking, a recent study published by researchers from the University of Rochester in the journal *Plus One* suggests that e-cigarettes are toxic to cells.

Researchers observed that the epithelial cells (layers of cells that line hollow organs and glands of human lungs) showed signs of severe inflammation (the body's natural immune response) and of reactive oxygen species which can harm the cells (the reason we take anti-oxidants). They also found that smoking e-cigarettes can induce stress and cause cell damage. Similar studies done with mice showed corroborating results.

The heating element of the e-cigarette turns the e-liquid solution into an aerosol to mimic cigarette smoke. Many studies including this have found that heavy metals and other possible carcinogens from these aerosols can reach farther into the lungs, cell systems and blood stream in the form of nanoparticles.

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## Health: Toxic Flavors?

### E-Cigarette Flavorings Can Be Toxic to Lung Cells

HealthNews | 10/15/2015 10:00 AM

**Flavors in a cigarette vapor may cause health problems similar to those caused by smoking, a new study has concluded.**

While it's hoped to claim that electronic cigarettes are safer than traditional cigarettes, the release of so-called "toxic" flavor tobacco products may in part be the result of using traditional cigarettes.

A new research published in the American Thoracic Society's international peer-reviewed journal *Respiratory Research* has shown that the aerosolized nicotine contained in e-cigarettes may be toxic to lung cells.

Researchers from the University of Rochester in the USA found that the aerosolized nicotine contained in e-cigarettes may be toxic to lung cells. The researchers used a special culture of human lung epithelial cells to test different e-cigarette flavors.

The findings were found to decrease the cell viability and proliferation of the cells from control tobacco. E-cigarette users should be aware of the potential health risks in the various e-cig brands.

The researchers found that the aerosolized nicotine contained in e-cigarettes may be toxic to lung cells. The researchers used a special culture of human lung epithelial cells to test different e-cigarette flavors.

Researchers from the University of Rochester in the USA found that the aerosolized nicotine contained in e-cigarettes may be toxic to lung cells. The researchers used a special culture of human lung epithelial cells to test different e-cigarette flavors.



- Rowell, et al. (2015). Select E-Cigarette Flavors Alter Calcium Signaling, Cell Viability And Proliferation in Lung Epithelia. *American Journal of Respiratory and Critical Care Medicine*, 191.
- Zhu, et al. (2014). Four hundred and sixty brands of e-cigarettes and counting: implications for product regulation. *Tobacco Control*, 23, i63-i69.

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## Normalizing Use

### E-Cigarettes Are Gateway to Substance Abuse and Addiction

HEALTH | ADDICTION | Wendy Oskvick | @wendyoskivick | Sept. 8, 2014

YouTube | Facebook | Twitter | LinkedIn

**Nicotine, in any form, can prime the brain for harder drugs**

For a product so young, e-cigarettes are already generating volumes of research. And the latest, appearing in the *New England Journal of Medicine*, suggests that e-cigarettes serve as a "gateway drug" — meaning they could make users more likely to use, and become addicted to, other drugs like cocaine.

The wife-husband research team



http://time.com/3265187/e-cigarettes-gateway-drug/

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## Normalizing Use

**GATEWAY TO ADDICTION?**  
A Survey of Flavor Electronic Cigarette Manufacturers and Targeted Advertising to Youth

April 14, 2014

A report written by the staff of Senator Richard J. Durbin (D-Ill.), Representative Henry A. Waxman (D-Calif.), Senator Tom Harkin (Iowa), and U.S. House of Representatives Committee on Oversight and Accountability (2013-2014).  
PDF: [http://www.durbin.senate.gov/download/report\\_e-cigarettes](http://www.durbin.senate.gov/download/report_e-cigarettes)

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## Youth Initiation

**Youth E-Cigarette Use Tripled from 2013 to 2014**

Year	Percentage
2011	1.5%
2012	2.8%
2013	4.5%
2014	13.4%

Percentage of High School Students Who Have Used E-Cigarettes in the Past 30 Days (Source: CDC's National Youth Tobacco Survey)

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## Youth Initiation

**Awareness of E-cigarette Advertising**  
Among 13- to 17-year-Olds

Media Type	All Youth	Ever Cigarette Smokers	Current Cigarette Smokers
- TV -	~45%	~55%	~60%
- Radio -	~25%	~35%	~40%
- Print -	~30%	~45%	~50%
- Online -	~45%	~65%	~80%
- Retail -	~60%	~75%	~85%

Legacy for Health. Vaporized - E-Cigarettes, Advertising, and Youth. May 2014.

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## Adult Use

**Trends 2010-2013**

- **Ever Use:** ↑ 11.2% (1.8% to 13%)
- **Current Use:** ↑ 6.5% (0.3% to 6.8%)
- Use is highest among **young adults** (18-24, 14.2%)
- 32.5% of current e-cig smoker are **never or former smokers**



McMillen, Robert C et al. 2015. "Trends in Electronic Cigarette Use Among U.S. Adults: Use is Increasing in Both Smokers and Nonsmokers." *Nicotine & Tobacco Research* 17 (10): 1195-1202.

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## Regulatory Framework



**USA TODAY** NEWS SPORTS LIFE MONEY TECH TRAVEL OPINION 64° CLOUDWASBS YOUR TAKE

### 40 AGs urge tight regulation of e-cigarettes

Mark Pratt, Associated Press 2:28 pm EDT September 24, 2013

A letter to the FDA raises concerns about the marketing of e-cigarettes to children

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**npr**

your health

### E-Cigarettes: A Nearly \$2bn Industry, A Regulatory Wild West

OCTOBER 21, 2013 4:37 PM ET

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## Undermining Policy



*Welcome Back.*

**FIN**

blu **ELECTRONIC CIGARETTE**

blucigs.com

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## Undermining Policy

**Exclusive: With feds slow to act, states target e-cigarette sales to minors**

PHOTOS OF THE WEEK

To Your Health

**More than 16 million children live in states where they can buy e-cigs legally**

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## Undermining Policy

**Exclusive: With feds slow to act, states target e-cigarette sales to minors**

**Minors easily able to purchase electronic cigarettes online**

Date: March 2, 2015  
Source: The JAMA Network Journals  
Summary: Teenagers in North Carolina were easily able to buy electronic cigarettes online because both Internet vendors and shipping companies failed to verify ages in a study that assessed compliance with North Carolina's 2013 e-cigarette age-verification law, according to an article.

To Your Health

**More than 16 million children live in states where they can buy e-cigs legally**

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## Undermining Policy

**Proposed E-Cigarette Tax Landscape**

**E-Cigarette Taxation (as of Jan 2015)**

- Considering bills
- Taxation adopted
- None

Tobacco-Related Disease Research Program. E-Cigarettes: Informing Tax Policy Research in California. January 2015. <http://www.tdrp.org/highlights-news-events/e-cigs-tax-policy.html>

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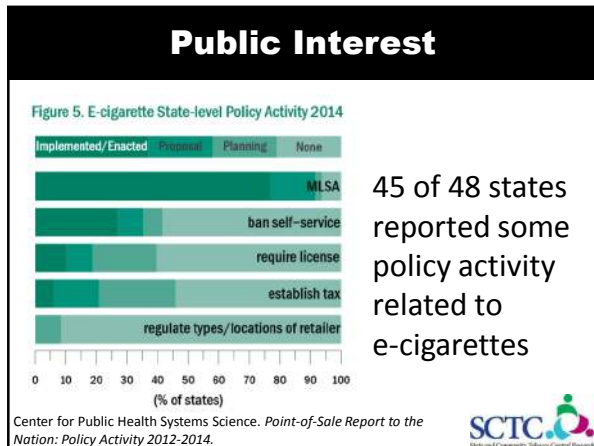
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### Policy Options

What can local & state practitioners DO about electronic smoking devices?

- Update definitions
- Inclusive licensing
- Restricting self service
- Restrict promotions
- Ban sampling
- Child safe packaging
- Flavor restrictions
- Taxes

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### Resources

**COUNTER TOBACCO.ORG**

REAL THINGS & REAL WORDS | REAL SELLERS | REAL EVIDENCE | REAL CHOICES | NEWS | ABOUT | **SEARCH**

**EGARETTES AT THE POINT OF SALE**

On September 29, 2014, 48 state attorneys general signed the CTPA to regulate e-cigarettes, which is a landmark event in tobacco control history. This is the first time that all 50 state attorneys general have signed a joint statement regarding the regulation of e-cigarettes. The CTPA is the first of its kind and will be a model for other states to follow.

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## Resources



**Coming in 2016:  
e-STARS & v-STARS**

Help develop these tools:  
October 26, 29  
CounterTobacco.org for details

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**Thank you!**

[info@countertobacco.org](mailto:info@countertobacco.org)

 /CounterTobacco       @CounterTobacco

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ChangeLabSolutions

### POS Strategies to Regulate Electronic Smoking Devices



Presented by  
Ian McLaughlin, JD  
Program Director

September 25, 2015

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**ChangeLab Solutions**

Healthier communities for all through better  
*laws and policies.*



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**ChangeLab Solutions**



**Ian McLaughlin, JD**  
Program Director



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**OVERVIEW**

1. How are electronic smoking devices currently regulated?
2. How can states and local communities address electronic smoking devices at the POS?



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# HOW ARE ELECTRONIC SMOKING DEVICES CURRENTLY REGULATED?



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### History of FDA's e-cigarette regulation

**2009:** First attempt of the FDA to regulate e-cigarettes as a drug delivery device

**2010:** United States Courts of Appeals *Sottera, Inc v. FDA*  
Holdings: "The FDA lacked authority under FDCA's drug/device provisions to regulate tobacco products customarily marketed *without claims of therapeutic effect*; FDA had authority to regulate tobacco products customarily marketed without claims of therapeutic benefit under the Tobacco Act."

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### Deeming Rule

April 2014: the FDA issued its proposed "Deeming Rule," which would extend its regulatory authority over e-cigarettes, cigars, pipe tobacco, and hookah tobacco

Until the rule is adopted, FDA lacks authority to regulate the sale or manufacturing of e-cigarettes as tobacco products



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### If passed, the Deeming Rule Would:

- Prohibit sales to minors
- Restrict vending machine sales
- Prohibit free samples
- Require health warnings
- Require disclosure of ingredients
- Allow for FDA review
- Require scientific evidence to support claim that an e-cig product is less harmful

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### What Deeming Won't Do

Deeming rule will not affect states' and localities' ability to regulate:

- Licensing requirements
- Sales restrictions and "plug-ins"
- Taxes
- Marketing restrictions allowable under 1<sup>st</sup> Amendment



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### Advance Notice of Proposed Rulemaking -- E-liquids



The FDA has started rulemaking process concerning nicotine warnings and child-resistant packaging for liquid nicotine, nicotine-containing e-liquid(s).

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### HOW CAN STATES AND LOCAL COMMUNITIES ADDRESS ELECTRONIC DEVICES AT THE POS?



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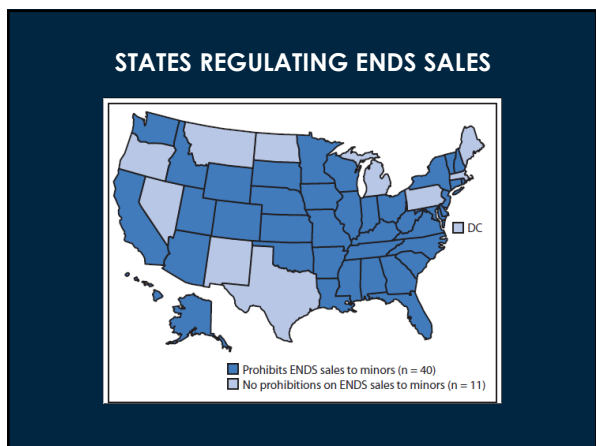
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### U.S. E-Cigarette Regulations - 50 State Review (2015)

The following is a snapshot of the U.S. landscape of e-cigarette regulation as of May 22, 2015. The information below was based on a 50-state (plus Washington, D.C.) survey of current state statutes pertaining to e-cigarette regulations in the following areas: definition of "tobacco product," taxation, product packaging, youth access/other retail restrictions, and smoke-free air legislation. Please note that some links go to legislative websites or portals because the laws have not yet been codified or are not otherwise available. The N/A designation refers to the lack of state laws or regulations related to e-cigarettes as of May 22, 2015; however, many local laws in these states (and throughout the U.S.) address e-cigarettes.

Please click on a state to see the regulations in place as of May 22, 2015.

[Click here to download the complete data set. \(PDF\)](#)

Available at:  
[www.tclconline.org](http://www.tclconline.org)

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### In light of pending laws & regulations at the federal level ...

### What can state and local governments do?

Wikimedia Commons

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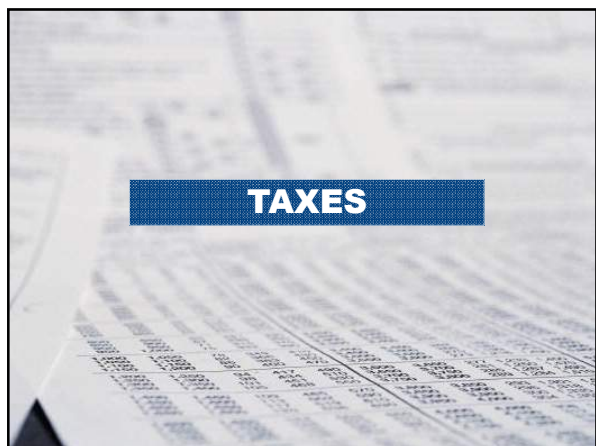
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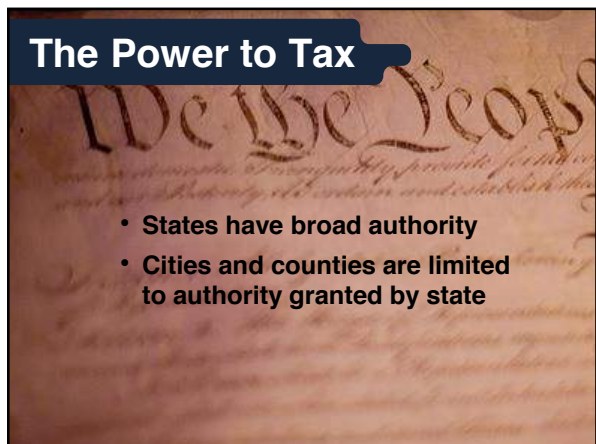
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## The Power to Tax



- States have broad authority
- Cities and counties are limited to authority granted by state

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## Taxes

What Products to Tax?

- E-liquids with nicotine
- E-liquids without nicotine?
- How to address component parts?



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## Taxes

Additional considerations:

- What should the tax rate be?
  - Fixed rate, or ad valorem tax at equivalent rate for cigarettes?
- Determining the point of intervention?
  - Depends partly on whether state or local
  - The unique problem posed by vape shops

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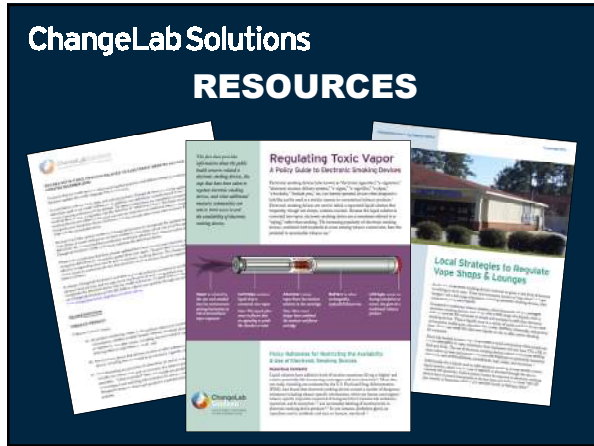
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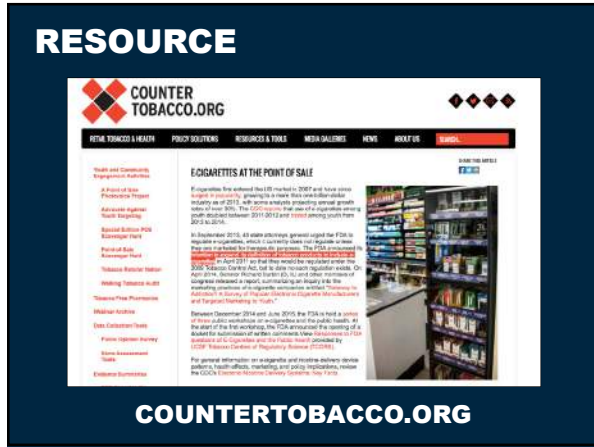
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**Disclaimer**

The information provided in this discussion is for informational purposes only, and does not constitute legal advice. ChangeLab Solutions does not enter into attorney-client relationships.

ChangeLab Solutions is a non-partisan, nonprofit organization that educates and informs the public through objective, non-partisan analysis, study, and/or research. The primary purpose of this discussion is to address legal and/or policy options to improve public health. There is no intent to reflect a view on specific legislation.

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ChangeLabSolutions

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**Thank you!**

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imclaughlin@changelabsolutions.org  
www.changelabsolutions.org



Follow us on Twitter!  
@ChangeLabWorks

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