

February 14, 2017

Dear Senate Assessment and Taxation Committee:

Hello my name is Wally Gibson, I own and operate Always There Home Care, LLC out of Independence, Kansas based in Montgomery County which is located on the border with Oklahoma.

Through my 20+ years in the medical equipment business I see the impact of smoking has on my patients. I had 17 oxygen patients who still smoked while they were on my oxygen machines, which caused a huge liability risk and premium increases every year. So when my wife, Cj was able to successful quit her 27-year, pack and a half a day smoking habit 4 years ago without the traditional side effects of smoking by vaping my thoughts immediately turned to my oxygen patients and I invested in just very low-key starter kits and we were able to successfully get all 17 of my oxygen patients off of smoking while they were on my machine and then transition them to quitting smoking entirely, many whom have of quit vaping as well.

So based on that success and the need and demand of people that wanted to quit smoking, CJ and I opened One Stop Vape Shop in Independence and it has grown substantially and we have been able to help hundreds of people in our community stop smoking completely! This \$0.20ml tax is poised to wipe-out most if not all of the success that not only my company, but companies all across the state that have had getting their customers off of smoking and that would be a shame.

I believe that there is substantial unintended consequences that has not been thought out. Specifically in my case being that Montgomery County shares a border with Oklahoma we've had to go thru substantial cost and open another location across the state lines in just to be able to still serve my existing customer base and that's ridiculous. The vast majority of all of our customers will not and have stated that they will not pay the \$0.20ml sin tax, they will come across state lines and they've indicated that they will buy online and then the state will lose not only the sin tax but also the existing sales tax because they're highly unlikely to report it as compensating use. Or worse, and we hear this too much you will make vaping more expensive than smoking and force people back to

smoking. And that is literally taking people's lives into your own hands with substantial consequences to that.

My understanding from working in the medical field for the past 20 years is that sin tax or consumable materials tax on alcohol and tobacco has been used to offset the cost of the state's Medicaid Program treating the medical conditions caused by smoking and drinking. I'd like to point out to you that vaping is not either of those. Vape juice contains no tobacco, even if the vape juice contains nicotine the nicotine alone is not any part of the tobacco plant. Nicotine while common and higher concentrations can be extracted from the tobacco plant it also can be sourced from several different vegetables like broccoli, cauliflower, eggplant, tomatoes and numerous items from the nightshade family.

Maybe I'm naive but I also understood that any tax was to be equally applied across all lines? RJ Reynolds who got this \$0.20 tax language into legislation in conference committee, is magically exempt from the very tax that they imposed? Also I don't believe that the tax applies to other nicotine sources for instance, your gums, nicotine patches, etc so it is not uniformly applied to products that contain nicotine. I suggest to you that the implementation of this issue equates to taxation without representation! My understanding is that "we the people" did not get a say in this legislation, we have not had an economic impact study as required, we were excluded as stakeholders and as customers from having any input in the system and we understood it to be a violation of the legislation's own protocol to not have open hearings for this type of situation? Instead RJ Reynolds was able to insert language into the bill three times, and pulled out 3 times only to have it stuck back in on the final conference committee bill in the Midnight Hour of an overextended legislative session for the past due budget.

Being on the border of Oklahoma and close to Missouri as well vapor stores are hearing radio commercials and print ads specifically targeting Kansans to come across the border where they do not have to pay the sinn tax and it's working, are sales are significantly lower just from January 1st to current. Many vape shops across the state have closed in the last quarter of 2016 and into the beginning of 2017. Montgomery County had three stores, two in Coffeyville and myself in Independence and I am the last one standing as Excel Vapors closed December 30th specifically

because of this tax! Go Natural Vapor City moved across the state lines into South Coffeyville, Oklahoma shortly after the tax was announced and has built his customer base back on a simple mile drive across state line into South Coffeyville, OK and avoided the tax completely. I have a copy of a facebook and newspaper ad, and he has ran multiple radio ads to entice people across the line.

I brought the standard size bottles that most stores sell. The Vape juice bottle I'd like to show you this 120 ml bottle that many stores retail for \$19.99. With the \$0.20 milliliter tax you would pay an additional \$24 in tax a whopping 140% tax of the bottle size. So you can understand hopefully that consumers in Kansas are not going to react well to that at great of an expense. So I faced a moral delima to keep my customer base from going back to smoking I had to make the gut-wrenching decision to open a separate shop in Oklahoma and great personal expense and delay or completely scrap my business plan of opening 4 additional stores in SEK. Many of our customers, even here on the border have indicated that they'll go online to purchase juice and since online can sell hardware cheaper than brick & mortar stores without tax on juice and equipment all border and especially those stores that represent Kansas in the landlocked areas are going to lose their customer base as well to online sales! You're going to have many people go back to smoking and some suggest that's what the state wants due to funding from the Master Tobacco settlement? It is proven fact that vaping has reduced the number of smokers in our state and statistically nationwide in adults and teenagers smoking is at an All-Time low. We've been able to accomplish as an industry what smoking cessation programs and others have failed to do, we're getting people to quit smoking, that should be a win-win and it should be celebrated and instead we're being forced to extinction.

If I have to close my Independence store within the next 6 months because of this tax I will lose a substantial investment, the state will lose my existing sales tax revenue, they lose my property tax, income tax etc because if I have to close this store to move and operate out of Oklahoma then there's no sense for my family and I stay here either and I'm a lifelong Kansas and that pains me to say that. but that's the reality. In addition to that, my full and part-time employees will be out of a job or move to OK with me. You're going to see that all the way across the state, a horrible situation people losing their jobs.

What's as disturbing to me is I had a business plan mapped out to open four additional vapor stores in my area. We have been successful as we ask our customers what their habits were, we work with them to find a proper solution in both equipment, nicotine level and educate them so that they have the best chance to be successful and not go back to smoking. I work with my doctors, I work with our customer base and we get a substantial amount of referrals from our local physician community. Our customers talk all the time about how much better that they feel and know with this legislation we are putting them at risk of going back on the pathway to the grave. That's terrible. I've been proud to be a Kansan, I'd like to point out that the vapors in this state did not create the budget deficit that we're facing and it shouldn't be on our backs that this tax is even being entertained. This state requested a \$1.00 increase on tobacco tax to a \$1.79, RJ Reynolds crafted legislation language and suggested that the state collect the balance from vaping. They were successful in getting their suggested tax reduced by 0.50 per pack AND exempting their product from having to pay the vapor tax. It isn't right, and again "We the People" had absolutely no say in the legislative process that this happened in. In an unprecedented move this tax was never in open legislation. The Legislative bodies have not even followed their own rules and as a result max confusion.

I respectfully ask that this tax be issued a stay or moratorium and be remanded back to the legislation so that they can have open hearings, so that you can perform an economic impact study and involve all of us as stakeholders and consumers to have a voice and a say in this situation.

If that can not be done, the related \$0.05 suggested tax is more in line with what's available on a national level. And while I'm not a proponent of any tax other than the existing sales tax obviously we would support that bill over \$0.20.

I don't want to leave this state, I really don't want this state to be the laughingstock of the nation any longer on so many issues. At least we can use common sense to control this one so please consider remanding this back to the legislation for adapting and allowing due process as required.

Thank you, I'll answer any questions as needed.

Wally Gibson

