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To: Assembly Budget Committee
From: Eric Blomgren, Executive Director
New Jersey Gasoline, Convenience Store, Automotive Association

Re: Oppose S-4661/A-XXXX "Increases tax rate on liquid nicotine and container e-liquid."

NJGCA represents a large portion of the motor fuel retail and convenience stores across the state, which total more than 3,700 locations statewide and employ over 30,000 people.

This bill increases the tax on liquid nicotine from 10¢ per mL to 30¢ per mL on vaping cartridges. That works out to an average increase of about 14¢-40¢ per cartridge, depending on the manufacturer. This is despite the fact that after extensive review, the FDA itself has formally approved the sale and marketing of several different vaping products as being "appropriate for the protection of the public health."

It also seems doubtful that the State will be able to collect the few million dollars from this tax increase it expects to. As a consequence of the state's ban on all non-tobacco flavored vapes (even menthol flavor), a massive proportion of the vaping market in this state is being sold illegally. One recent survey of discarded vaping items and packages collected from the Newark area found that 96% of them were illegal for retail sale in our state. It is doubtful that many of the people selling an illegal product are paying the State the proper tax on vape products. In fact, one of our members recently purchased an illegal flavored product from a competitor, and found they did not even charge them sales tax.

We currently have an unenforced prohibition on these products, which is proving to be the worst of all policy options. State and local enforcement officials have shown in the last five years to be largely uninterested in enforcing this ban, which is on the sale of products that are legal in other states, between retailers and consenting adults. Honest retailers who want to be in compliance with all regulations as best as possible are left feeling like fools for not selling these items, and in doing so losing sales and customers to dishonest competitors. Those willing to sell illegal products (be they in smoke shops or online) are also likely to be uninterested in following other laws, like paying the taxes on these items (vape tax and sales tax), and may be less concerned with complying with the ban on sales to those under the age of 21. Current law is hurting small businesses, forgoing state tax revenue, and doing nothing to reduce consumption of these products.

Rather than increasing the tax, the State should consider either alterations to this ban, or proactive enforcement, including enforcement by the Division of Taxation, which would likely generate more revenue than increasing a tax rate that is too rarely complied with.

At a time when affordability matters more than ever, we ask that you not move forward with this tax increase. Thank you for your consideration.