



NEW YORK'S  
TOBACCO CONTROL  
PROGRAM AND THE  
NEED FOR MORE  
SUPPORT

## FALLING SHORT

NEW YORK PUBLIC INTEREST RESEARCH GROUP  
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# Acknowledgements

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Written by Blair Horner, Nadine Pratt MPH, Robert Zentgraf with Megan Ahearn and Russ Haven of NYPIRG.

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NYPIRG  
107 Washington Avenue  
Albany, N.Y. 12210

## **FALLING SHORT**

### **EXECUTIVE SUMMARY**

Shocked by the rapid growth in the number of underage youth using electronic cigarettes, New York State approved legislation ending the sale of flavored vaping products. As part of that agreement, the new plan included increased public educational efforts to deter people from using vaping products as well as educating young people on the dangers of electronic cigarettes.

The vaping industry has increasingly become dominated by big tobacco companies, an industry that has spent decades fighting public health measures. Traditional combustible tobacco products continue to entice minors into a dangerous addiction. Electronic cigarettes, on the other hand, have been surreptitiously marketed as benign and trendy and have seen a skyrocketing use.

This report reviews the science behind tobacco control, the recommendations of the nation's experts on how to run a pro-health tobacco control program, and the new threats posed by vaping and flavored tobacco products. In addition, the report examines the responsibilities of the Tobacco Control Program (TCP) and shows how, despite massive available revenues, New York has starved its health efforts and the TCP is now falling short.

#### **Findings:**

- New York has collected over \$24 billion in tobacco taxes and fees since 1999, the year the national Master Settlement Agreement (MSA) went into effect. Coupled with tobacco revenues from the MSA, New York has collected nearly \$41 billion since 1999.
- Despite this windfall, New York spends *less* today (adjusted for inflation) on its state tobacco control program than it has over the past twenty years. New York has spent less than \$1 billion on tobacco control since the MSA, despite promises to use the money to combat tobacco addiction.
- While it appears that the state does follow expert guidance on how to implement a tobacco control program, independent audits have repeatedly identified the state's lack of resources as a major flaw.
- At the same time the state has added responsibilities to monitor vaping use, it has failed to provide additional resources for these activities. Despite the availability of new revenues generated by a tax on vaping products.
- Flavored tobacco products, like their vaping cousins, are designed to entice youth to a deadly addiction. A loophole in federal law allows the sale of menthol flavored cigarettes and the current federal restriction does not cover flavored cigarillos, chewing, and cigar tobacco products. While New York now prohibits the sale of flavored vaping products, it has not banned the sale of flavored tobacco.

- Time has eroded the health and financial benefits of the state's tobacco tax rates due to inflation. The state's cigarette tax (and little cigar tax) has remained unchanged over the past decade. Other tobacco taxes have not changed and are lower than those found on cigarettes.

### **Recommendations:**

- New York should increase its commitment to tobacco control efforts by following the recommendations of the U.S. Centers for Disease Control and Prevention (CDC), which recommends the state spend up to \$203 million annually.
- Given its added responsibilities, *additional* resources (beyond the amount recommended by the CDC), should be added to ensure adequacy in tackling its new vaping public educational efforts.
- For the same reasons that the state banned the sale of flavored vapes, it should prohibit the sale of flavored *tobacco* products.
- The state's cigarette and little cigar tax should be raised \$1 and other tobacco products should be taxed at equivalent rates. The state should embrace new tax stamp technologies and bolster tax enforcement efforts.

## COMPONENTS OF A MODEL TOBACCO CONTROL PROGRAM

Recommendations on what defines a comprehensive statewide tobacco control program are provided in the CDC's *Best Practices for Comprehensive Tobacco Control Programs*.<sup>1</sup>

A comprehensive tobacco control program has three main components: (1) mobilizing communities to change social norms and public policies so that they discourage tobacco use by adults and children; (2) using media and counter-marketing to educate both adults and children about tobacco issues, expose tobacco industry advertising strategies, and deglamorize tobacco use; and (3) treating adult smokers' nicotine addiction. These components are supported and strengthened by surveillance and evaluation activities and by training and program administrative support.

In a comprehensive program, these individual program elements work together to prevent and reduce tobacco use. The CDC's *Best Practices* document lays out how a comprehensive tobacco control program can be operationalized as a state program. Using evidence-based analysis of existing comprehensive state tobacco control programs and published evidence-based practices, the CDC provides guidance on the scale of funding necessary to support an effective program and presents state-specific funding ranges and programmatic recommendations. It recommends that New York should spend a minimum of \$142.8 million on its comprehensive tobacco control program with a recommended spending of up to \$203 million.<sup>2</sup>

**Earmarking approximately a dime of every dollar of the annual revenue generated by tobacco would fund New York's tobacco control program at the median CDC recommended level.**

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<sup>1</sup> U.S. Centers for Disease Control and Prevention (CDC), *Best Practices for Comprehensive Tobacco Control Programs*, Atlanta, GA: U.S. Department of Health and Human Services (HHS), 2014.  
[https://www.cdc.gov/tobacco/stateandcommunity/best\\_practices/index.htm](https://www.cdc.gov/tobacco/stateandcommunity/best_practices/index.htm).

<sup>2</sup> Ibid,  
[https://www.cdc.gov/tobacco/stateandcommunity/best\\_practices/pdfs/2014/sectionBtotalfunding.pdf](https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/sectionBtotalfunding.pdf).

## NEW YORK'S TOBACCO USE PREVENTION AND CONTROL PROGRAM

As part of the states' response to the MSA, in 2000 New York established a Bureau of Tobacco Control to "administer the state's Tobacco Control Program (TCP) to reduce illness, disability and death related to tobacco use and secondhand smoke exposure, and to alleviate the social and economic burdens caused by tobacco use. TCP uses an evidence-based, policy-driven and cost-effective approach to decrease tobacco initiation by youth, motivate adult smokers to quit and eliminate exposure to secondhand smoke."<sup>3</sup>

The program is guided by the principles issued by the CDC (see above) and is required to be independently audited.

The CDC has issued recommended funding levels for the TCP in New York State that range from \$142.8 million annually to \$203 million.<sup>4</sup>

As seen below, funding of the state's Tobacco Control Program started in 2000 at \$30 million and peaked at \$85.5 million in 2008. Since then, the program has been slashed by more than 50 percent. In fact, when adjusted to 2019 dollars, New York now spends *less* on tobacco control than it has at any point since the Master Settlement Agreement went into effect.

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<sup>3</sup> New York State Health Department, The New York State Tobacco Control Program (NYS TCP), [https://health.ny.gov/prevention/tobacco\\_control/program\\_components.htm](https://health.ny.gov/prevention/tobacco_control/program_components.htm).

<sup>4</sup> U.S. Centers for Disease Control and Prevention, *Best Practices for Comprehensive Tobacco Control Programs*, Atlanta, GA: U.S. Department of Health and Human Services (HHS), 2014. [https://www.cdc.gov/tobacco/stateandcommunity/best\\_practices/index.htm](https://www.cdc.gov/tobacco/stateandcommunity/best_practices/index.htm).

| <b>Fiscal</b> | <b>Appropriation<sup>5</sup></b> | <b>Adjusted in 2019 Dollars<sup>6</sup></b> |
|---------------|----------------------------------|---|
| 2000          | \$30,000,000                     | \$44,735,550                                |
| 2001          | \$30,000,000                     | \$43,125,990                                |
| 2002          | \$40,000,000                     | \$56,851,950                                |
| 2003          | \$40,000,000                     | \$55,412,660                                |
| 2004          | \$39,950,000                     | \$54,297,490                                |
| 2005          | \$39,450,000                     | \$52,071,520                                |
| 2006          | \$43,360,000                     | \$55,038,990                                |
| 2007          | \$85,485,000                     | \$106,303,850                               |
| 2008          | \$85,500,000                     | \$101,958,390                               |
| 2009          | \$80,400,000                     | \$95,848,050                                |
| 2010          | \$68,000,000                     | \$77,784,800                                |
| 2011          | \$58,400,000                     | \$66,750,430                                |
| 2012          | \$41,400,000                     | \$45,974,790                                |
| 2013          | \$41,400,000                     | \$45,253,070                                |
| 2014          | \$39,300,000                     | \$42,289,880                                |
| 2015          | \$39,300,000                     | \$42,327,710                                |
| 2016          | \$39,300,000                     | \$41,754,380                                |
| 2017          | \$39,300,000                     | \$40,735,970                                |
| 2018          | \$39,300,000                     | \$39,909,640                                |
| 2019          | \$39,800,000                     | \$39,800,000                                |
| <b>TOTAL</b>  | <b>\$919,844,999</b>             |   |

As you will see, despite the billions raised and the hundreds of millions spent, there continues to be a real need in New York for an aggressive, better-funded tobacco control program.

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<sup>5</sup> New York State Health Department, Tobacco Use Prevention and Control Program. Numbers rounded up.

<sup>6</sup> U.S. Bureau of Labor Statistics, CPI Calculator, [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm).

## REVENUES THAT NEW YORK STATE HAS RECEIVED FROM FEES AND TAXES ON TOBACCO PRODUCTS

New York's Tobacco Use Prevention and Control Program is supported through annual state budget appropriations. The state raises significant revenues from various taxes placed on tobacco products. Below is the aggregate amount raised over the past twenty years from various taxes and fees tied to the sale of tobacco products in New York.

| Year         | New York State Revenues Generated By The Sale<br>of Cigarette/Tobacco Products <sup>7</sup> |
|--------------|---|
| 1999         | \$666,700,438   |
| 2000         | \$671,653,015   |
| 2001         | \$1,023,770,324   |
| 2002         | \$1,014,307,039   |
| 2003         | \$1,119,910,405   |
| 2004         | \$1,012,629,066   |
| 2005         | \$978,933,497   |
| 2006         | \$974,167,697   |
| 2007         | \$984,666,804   |
| 2008         | \$976,186,562   |
| 2009         | \$1,340,325,929   |
| 2010         | \$1,364,254,372   |
| 2011         | \$1,617,245,593   |
| 2012         | \$1,633,742,059   |
| 2013         | \$1,550,588,946   |
| 2014         | \$1,453,371,120   |
| 2015         | \$1,313,729,105   |
| 2016         | \$1,250,695,668   |
| 2017         | \$1,235,774,522   |
| 2018         | \$1,172,394,246   |
| 2019         | \$1,017,314,908   |
| <b>TOTAL</b> | <b>\$24,373,361,315</b>   |

<sup>7</sup> New York State Department of Taxation, [https://www.tax.ny.gov/pdf/2018-19\\_collections/FY\\_18\\_19\\_Collections\\_Report.pdf](https://www.tax.ny.gov/pdf/2018-19_collections/FY_18_19_Collections_Report.pdf)



## REVENUES THAT NEW YORK STATE HAS RECEIVED FROM THE MASTER SETTLEMENT AGREEMENT

Two decades ago, the nation's state attorneys general struck a deal with the tobacco industry. The tobacco industry would provide tens of billions of dollars to the states as compensation for the damage that they caused to the public, tobacco-users, and to taxpayers across the nation. As part of the agreement, the states dropped their litigation against the companies. That agreement is known as the Master Settlement Agreement (MSA).

New York State was a party to this litigation. One requirement of The MSA is that cigarette companies that participated in the settlement must annually pay billions of dollars to the states as compensation for the health costs to their Medicaid programs resulting from tobacco use.

After the MSA was signed in November 1998, many governors, state attorneys general, and other high-ranking state officials expressed strong support for investing substantial portions of the tobacco settlement payments into new efforts to prevent and reduce tobacco use in their states.

Announcing the settlement, then-New York Attorney General Dennis Vacco released a statement:

“As a result, millions of children who are not yet smokers will be spared horrific diseases and suffering, *and millions of current smokers will get a real chance to quit and reclaim their good health.*” [Emphasis added]<sup>8</sup>

Since its implementation, New York State has received over \$16 billion in revenues from the participating tobacco companies. As seen below, New York has received at least \$589 million and as much as \$1.4 billion annually, for a 20-year total of over \$16 billion. This is more than any other state party to the agreement.<sup>9</sup> The state has received an enormous amount of money, much of which has been used for health care but, as referenced in this report, little has been used for deterring kids from smoking or helping smokers to quit.

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<sup>8</sup> New York State Office of the Attorney General, News Release, “Vacco: \$200 Billion Tobacco Plan to Protect Health of Kids,” November 16, 1998.

<sup>9</sup> “Payments to Date (as of April 18, 2019),” National Associations of Attorneys General, [https://www.naag.org/assets/redesign/files/tobacco/2019-04-19%20Payments\\_to\\_States\\_Inception\\_through\\_April\\_18\\_2019.pdf](https://www.naag.org/assets/redesign/files/tobacco/2019-04-19%20Payments_to_States_Inception_through_April_18_2019.pdf).

| Year         | MSA Revenues Received by New York State |
|--------------|---|
| 1999         | \$589,585,995.47                        |
| 2000         | \$688,466,153.07                        |
| 2001         | \$773,381,790.57                        |
| 2002         | \$912,524,225.58                        |
| 2003         | \$751,273,216.76                        |
| 2004         | \$802,259,699.04                        |
| 2005         | \$813,581,357.93                        |
| 2006         | \$744,369,230.72                        |
| 2007         | \$774,675,945.51                        |
| 2008         | \$834,457,275.85                        |
| 2009         | \$916,803,414.80                        |
| 2010         | \$764,570,098.77                        |
| 2011         | \$723,452,335.93                        |
| 2012         | \$737,740,683.17                        |
| 2013         | \$737,336,663.17                        |
| 2014         | \$828,824,306.45                        |
| 2015         | \$714,304,862.19                        |
| 2016         | \$1,432,460,402.05                      |
| 2017         | \$617,458,922.24                        |
| 2018         | \$650,307,498.31                        |
| 2019         | \$616,022,075.06                        |
| <b>TOTAL</b> | <b>\$16,423,856,152.64</b>              |

Thus far, during the 20-year period in which the Master Settlement Agreement has been in place, **New York has received nearly \$41 billion in combined taxes and settlement monies.** After two decades, a critically important question is has an adequate portion of that money been used effectively curb tobacco use as well as advance the public's health?

## **NEW YORK STATE'S LATEST BUDGET ADDS RESPONSIBILITIES TO ITS TOBACCO CONTROL PROGRAM, BUT ADDS NO NEW REVENUE**

This year's state budget included a number of new measures to reduce the use of flavored vaping products and place other restrictions on minors' access to those products. The new law:

- Prohibits the sale of any flavored electronic cigarettes, liquid nicotine, or vapor products, except for "tobacco flavored";
- Prohibits the sale of tobacco products, herbal cigarettes, vapor products or electronic cigarettes in a pharmacy or in a retail establishment that contains a pharmacy;
- Prohibits the acceptance of price reduction instruments for both tobacco products and e-cigarettes;
- Prohibits the display of tobacco products or electronic cigarettes in stores;
- Prohibits vapor product advertisements targeted at youth;
- Requires manufacturers of vapor products to submit a list of ingredients to the NYS Health Commissioner for publication; and
- Requires the state to launch a pro-health education effort targeting the use of electronic cigarettes. It is expected to be part of the TCP's efforts.

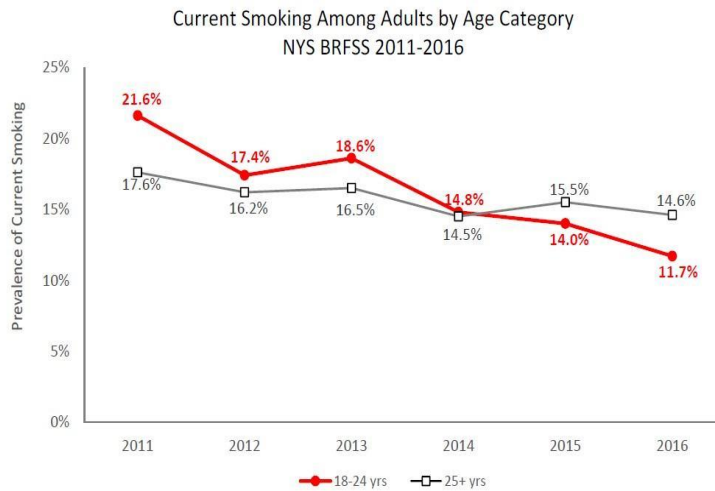
However, these policy interventions are not enough. Without adequate funding, the ongoing effort to combat tobacco and vaping addictions falls short. Ironically, the state now taxes vape products, but despite this new revenue, no additional resources have been earmarked for the TCP.<sup>10</sup>

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<sup>10</sup> New York State Department of Taxation and Finance, "Vapor Products," <https://www.tax.ny.gov/bus/vpt/default.htm#:~:text=A%2020%25%20supplemental%20sales%20tax,by%20a%20vapor%20products%20dealer>. Revenues generated by the vapor products tax can be found here, <https://www.tax.ny.gov/research/collections/june2020taxcollections.htm>.

## TOO MANY OF THOSE IN NEED OF HELP FROM THE STATE'S TOBACCO CONTROL PROGRAM DON'T GET IT

In addition to the Master Settlement Agreement, the tobacco taxes, and its tobacco control efforts, the state has enacted strict laws forbidding the use of tobacco smoking and e-cigarette vaping in virtually all workplaces, indoor public spaces, and in many outdoor park and public areas. As a result, New York's smoking rate has declined, and through its policy interventions the state has achieved a lower smoking rate than the national average. Although as seen below,<sup>11</sup> for adults aged 25 years and older the decline in smoking has stagnated.



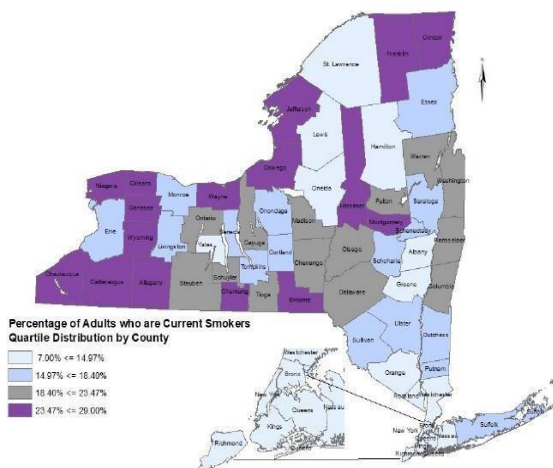
Additionally, those successes have been limited geographically. As seen below,<sup>12</sup> many upstate counties continue to have comparatively high smoking rates.

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<sup>11</sup> "Drastic Declines in Smoking Among Young Adults in New York," New York State Department of Health, January 2018, [https://www.health.ny.gov/prevention/tobacco\\_control/reports/statshots/volume11/n1\\_ny\\_ya\\_smoking\\_declines\\_2011-2016.pdf](https://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume11/n1_ny_ya_smoking_declines_2011-2016.pdf).

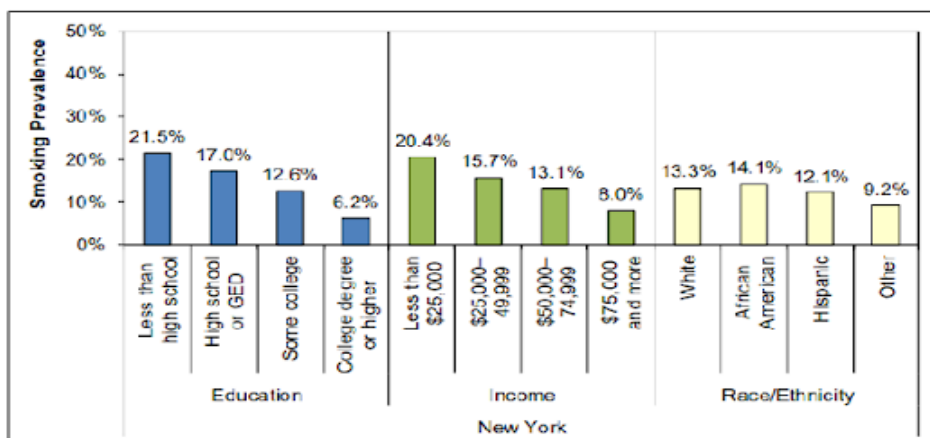
<sup>12</sup> "Prevalence of Current Smoking Among Adults in New York By County" New York State Department of Health, May 2018. [https://www.health.ny.gov/prevention/tobacco\\_control/reports/statshots/volume11/n4\\_current\\_adult\\_smoking\\_by\\_county.pdf](https://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume11/n4_current_adult_smoking_by_county.pdf).

Prevalence of Current Smoking Among Adults in NY by County  
NYS BRFSS 2016



The communities most harmed by the use of tobacco products are lower income, less educated, older, and those with poor mental health<sup>13</sup> - demographics often found in areas of upstate New York. Generally, the lower the income and education level, the more likely the person will smoke.<sup>14</sup>

Percentage of New York Adults Who Currently Smoke, by  
Income, Education, and Race/Ethnicity, Behavioral Risk  
Factor Surveillance System, 2018

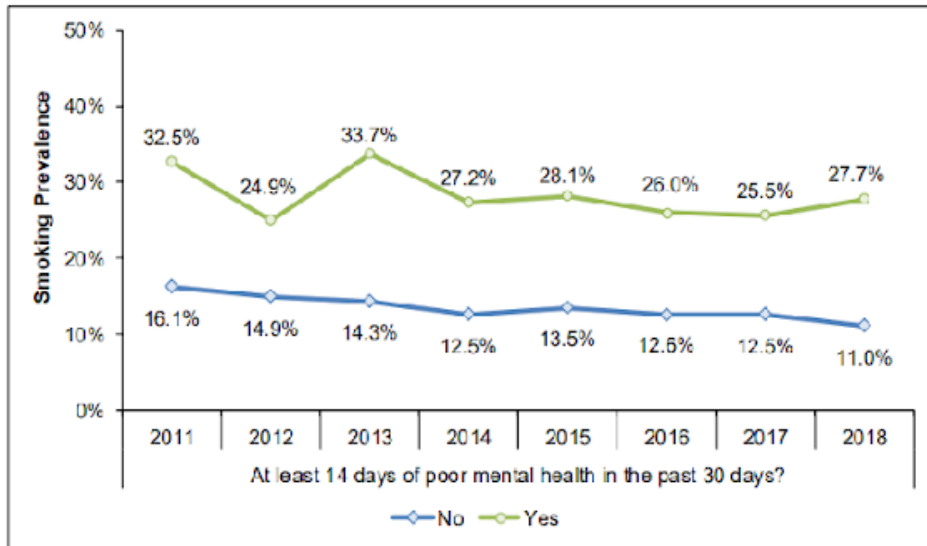


<sup>13</sup> New York State Health Department, BRFSS Brief, Number 1802, [https://www.health.ny.gov/statistics/brfss/reports/docs/1802\\_brfss\\_smoking.pdf](https://www.health.ny.gov/statistics/brfss/reports/docs/1802_brfss_smoking.pdf).

<sup>14</sup> Independent Evaluation of the New York Tobacco Control Program, NY TCP Advisory Board Meeting, October 10, 2019, Albany, NY. Research Triangle Institute.

Moreover, individuals who are dealing with mental health issues are more likely to smoke.<sup>15</sup>

### Percentage of New York Adults with Poor Mental Health Who Currently Smoke, New York Behavioral Risk Factor Surveillance System, 2011–2018



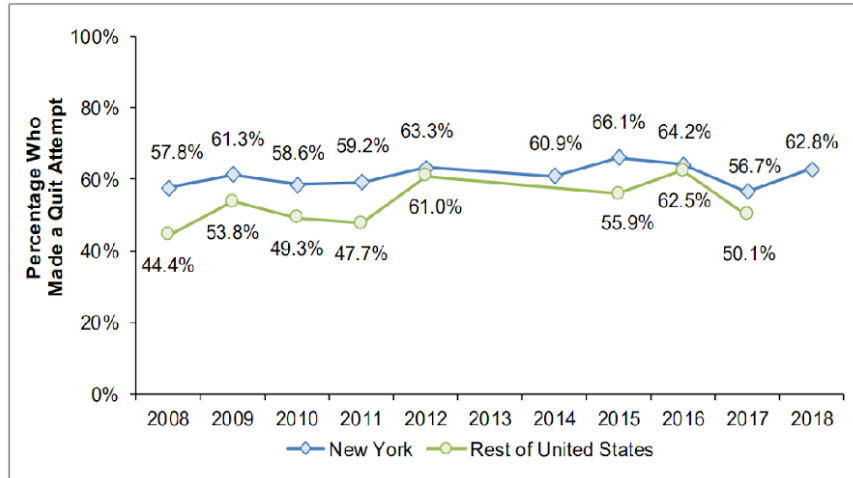
What is clear is that the vast majority of these smokers want to quit. As shown below, nearly two-thirds of smokers have tried to quit in a 12 month period.<sup>16</sup>

<sup>15</sup> Ibid.

<sup>16</sup> Independent Evaluation of the New York Tobacco Control Program, NY TCP Advisory Board Meeting, October 10, 2019, Albany, NY. Research Triangle Institute.

## Quit Attempts

Percentage of Adult Smokers Who Made a Quit Attempt in the Past 12 Months, New York Adult Tobacco Survey 2008–2018 and National Adult Tobacco Survey 2008–2017



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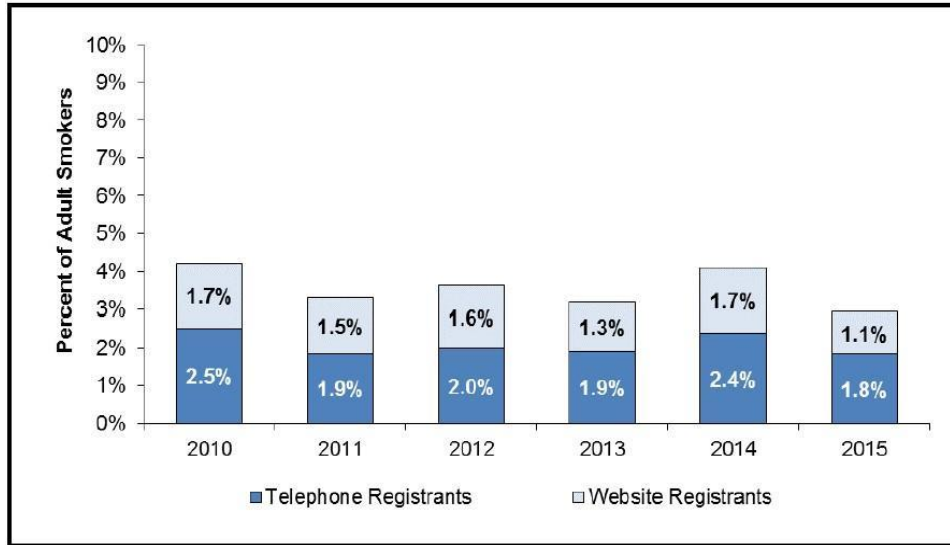
Note: There is a statistically significant upward trend among smokers in the rest of the United States.

Nationally, the proportion of smokers who use national or state Quitlines is small; however, there is evidence that “sustained, state-sponsored media can increase the number of registrants to telephone Quitlines and Web-based cessation services.”<sup>17</sup> As seen below, despite the solid majority of smokers who wish to quit, very few smokers avail themselves of the services provided by NYS’s Quitline.<sup>18</sup> It is clear that more funding is needed to increase utilization of this vital service and overall cessation statewide.

<sup>17</sup> Duke JC, Mann N, Davis KC, MacMonegle A, Allen J, Porter L. The Impact of a State-Sponsored Mass Media Campaign on Use of Telephone Quitline and Web-Based Cessation Services. *Prev Chronic Dis* 2014;11:140354. DOI: <http://dx.doi.org/10.5888/pcd11.140354>.

<sup>18</sup> 2016 Independent Evaluation Report of the New York Tobacco Control Program, [https://www.health.ny.gov/prevention/tobacco\\_control/docs/2016\\_independent\\_evaluation\\_report.pdf](https://www.health.ny.gov/prevention/tobacco_control/docs/2016_independent_evaluation_report.pdf).

**Figure 21. Percentage of Adult Cigarette Smokers in New York Who Registered for Services from the New York Quitline, 2010–2015**



Lastly, evidence of the impact on children in similar rural, lower income areas shows infants and toddlers may be at higher risk for second- and third-hand smoke than previously reported, according to a study supported by the National Institutes of Health. Approximately 15 percent of children in the study tested positive for cotinine, a byproduct formed when the body breaks down nicotine, at levels comparable to those of adult smokers. About 63 percent of children in the study had detectable levels of cotinine, suggesting widespread exposure to smoke.<sup>19</sup>

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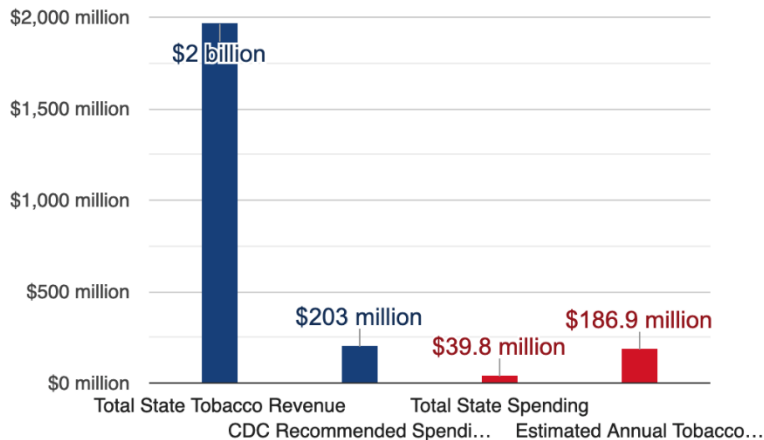
<sup>19</sup> “Low-income, rural kids at higher risk for second-or third-hand smoke exposure” National Institute of Health, December 6<sup>th</sup>, 2018 <https://www.nih.gov/news-events/news-releases/low-income-rural-kidshigher-risk-second-or-third-hand-smoke-exposure>.



## TOBACCO COMPANIES CONTINUE TO AGGRESSIVELY MARKET THEIR PRODUCTS

The public health threat from New York's failure to adequately fund its tobacco control efforts (despite the impressive potential resources available from tobacco taxes, fees, and the master settlement agreement) is exacerbated by the immense spending by tobacco companies to advertise their deadly products.<sup>20</sup>

### New York's Tobacco Revenue, CDC Recommended Spending, State Spending and Tobacco Industry Marketing

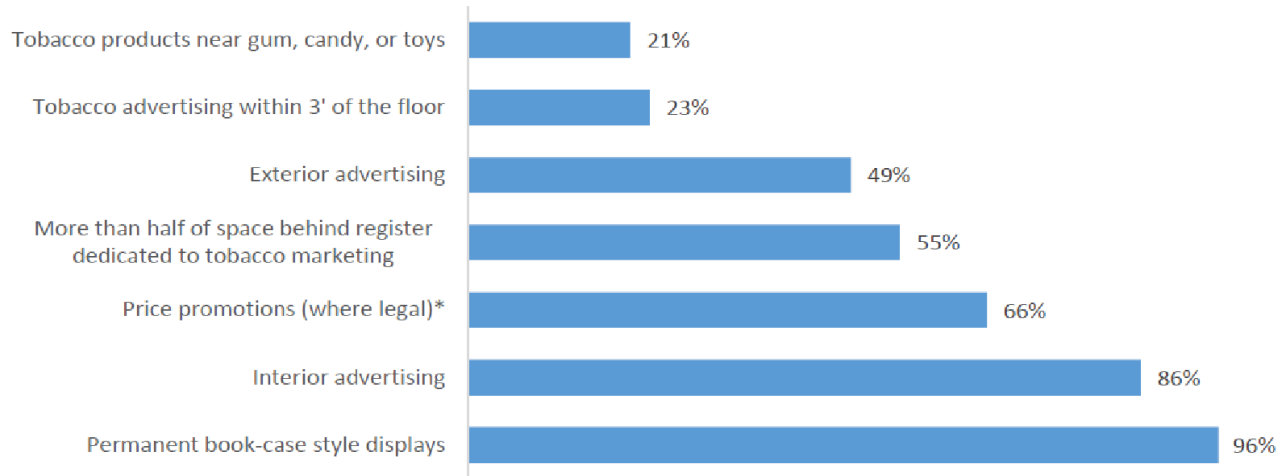


The industry does not advertise in the traditional sense, but uses less obvious, subtle messaging to appeal to would-be smokers.<sup>21</sup>

<sup>20</sup> Campaign for Tobacco Free Kids, "Broken Promises to Our Children, 2019, <https://www.tobaccofreekids.org/what-we-do/us/statereport/new-york>. Our review of the available tobacco revenues is slightly smaller than the one offered in the chart, roughly over \$1.8 billion.

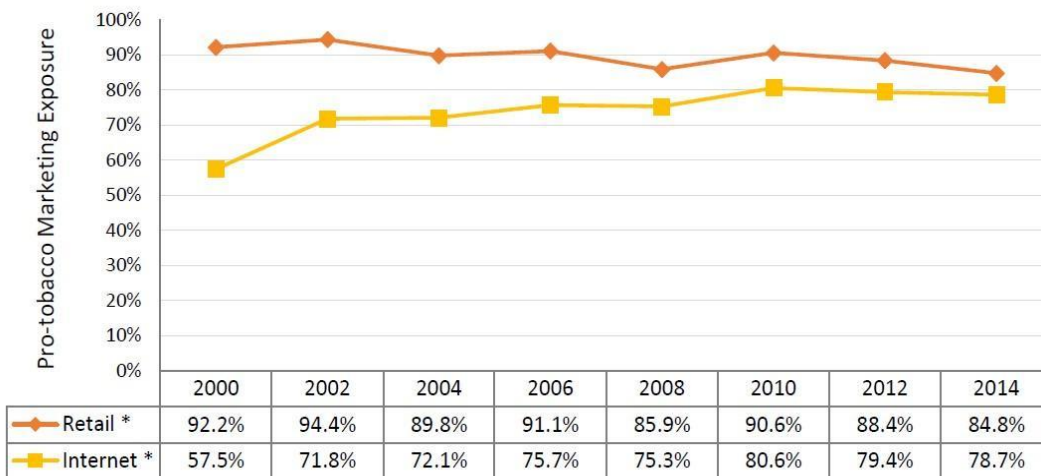
<sup>21</sup> "Tobacco Marketing is Pervasive in the Retail Setting" New York State Health Department, StatsShot Vol. 11, No.2 March 2018 [https://www.health.ny.gov/prevention/tobacco\\_control/reports/statshots/volume11/n2\\_ny\\_retail\\_tobacco\\_marketing\\_pervasive.pdf](https://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume11/n2_ny_retail_tobacco_marketing_pervasive.pdf).

### Percent of Licensed Tobacco Retail Stores with Tobacco Product Marketing Key Indicators, NY-RATS, 2016



The advertising is having its desired effect. A huge percentage of high schoolers have reported seeing these ads.<sup>22</sup>

### Percentage of NYS High School Students Reporting Awareness of Pro-Tobacco Marketing, 2000 – 2014



<sup>22</sup> New York State Department of Health. StatShot Vol. 9, No. 2 March, 2016. [https://www.health.ny.gov/prevention/tobacco\\_control/reports/statshots/volume9/n2\\_youth\\_exposure\\_to\\_tobacco\\_marketing.pdf](https://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume9/n2_youth_exposure_to_tobacco_marketing.pdf)

## FLAVORED TOBACCO AND VAPING, DANGERS THAT ENTICE CHILDREN

According to the New York State Department of Health, 35,000 high school students smoke and the average age of beginning smokers is 13.<sup>23</sup> Flavored tobacco products are widely considered to be “starter” products, establishing smoking habits that can lead to a lifetime of addiction, according to the U.S. Food and Drug Administration (“FDA”).<sup>24</sup> That is why the FDA banned the sale of *most* flavored cigarettes.<sup>25</sup> The FDA decision, however, continued to allow the sale of flavored (including menthol) non-cigarette tobacco products. The result has been the continued addiction of children to dangerous tobacco products. **As seen below, the Journal of the American Medical Association has found that the overwhelming number of minors who start using tobacco do so by using a flavored product.**<sup>26</sup>



And while it is true that flavored vaping products are a growing threat, as seen below, according to the New York State Department of Health, a significant percentage of youth tobacco users rely on other tobacco products.<sup>27</sup>

<sup>23</sup> New York State Health Department, See [https://www.health.ny.gov/prevention/tobacco\\_control/](https://www.health.ny.gov/prevention/tobacco_control/).

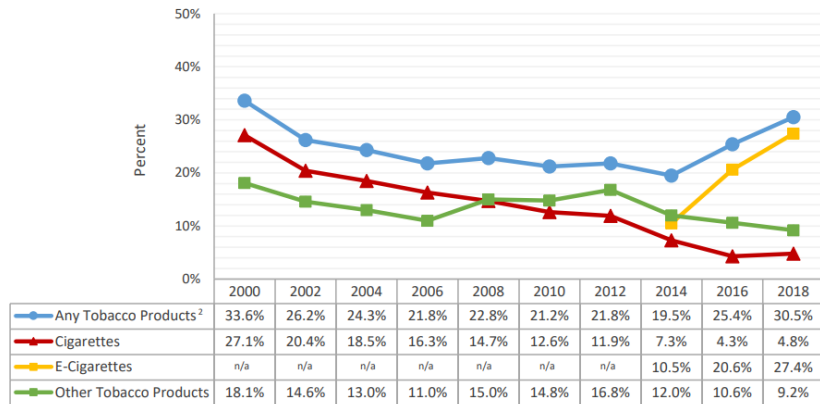
<sup>24</sup> The U.S. Food and Drug Administration, “Fact Sheet: Flavored Tobacco Products,” See <https://www.amadorgov.org/home/showdocument?id=6624>.

<sup>25</sup> In 2009, Congress enacted the *Family Smoking Prevention and Tobacco Control Act*, which banned the use of flavors other than menthol in cigarettes. Other tobacco products, including “little cigars” (cigarettes wrapped in paper containing tobacco), snuff and other smokeless tobacco products were not included in the prohibition.

<sup>26</sup> Ambrose, BK, et al., “Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014,” *Journal of the American Medical Association*, published online October 26, 2015.

<sup>27</sup> New York State Health Department, Bureau of Tobacco Control StatShot Vol. 11, No. 5/Oct 2018 Trends in Any Tobacco Product Use among High School Students in NYS, 2000-2018 Electronic Cigarette Use by Youth Increased 160% Between 2014 and 2018, See

Trends in Any Tobacco Product Use among High School Students<sup>3</sup> in NYS, 2000-2018



Those “other tobacco” products are often flavored since underage smokers are beginning smokers. According to the CDC, “Nearly two thirds (3.15 million, 64.1%) of middle and high school student current tobacco product users reported current flavored tobacco product use in 2018. E-cigarettes were the most commonly used flavored tobacco product in 2018; flavored e-cigarette use has increased in recent years.”<sup>28</sup>

Menthol-flavored tobacco products have been particularly enticing. Flavors improve the taste and reduce the harshness of tobacco products, making them more appealing and easier for beginners to try the product and ultimately become addicted.<sup>29</sup> Menthol cools and numbs the throat, reducing the harshness of cigarette smoke, thereby making menthol cigarettes more appealing to youth who are initiating tobacco use.<sup>30</sup>

Action is needed to remove from the marketplace flavored varieties of tobacco products that have been found to be most appealing to children and appear to be targeting the illegal youth or “starter” market. New York must continue its efforts to combat smoking and tobacco use among minors and reduce the substantial risk that youthful experimentation will lead to a long-term, deadly habit for thousands of young people each year. Such action is called for the New York State Department of Health’s Prevention Agenda 2019-2024: Prevent Chronic Diseases Action Plan, which stated, “Increase Tobacco Control Program Funding to the CDC-Recommended level, to ensure a comprehensive tobacco control program.”<sup>31</sup>

[https://www.health.ny.gov/prevention/tobacco\\_control/reports/statshots/volume11/n5\\_e-cigarette\\_use\\_by\\_youth.pdf](https://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume11/n5_e-cigarette_use_by_youth.pdf).

<sup>28</sup> CDC, Morbidity and Mortality Weekly Report, “Flavored Tobacco Product Use Among Middle and High School Students — United States,” 2014–2018, Weekly / October 4, 2019 / 68(39);839–844, Karen A. Cullen, PhD1; Sherry T. Liu, PhD1; Jennifer K. Bernat, PhD1; Wendy I. Slavitt, MPH1; Michael A. Tynan2; Brian A. King, PhD2; Linda J. Neff, PhD <https://www.cdc.gov/mmwr/volumes/68/wr/mm6839a2.htm>.

<sup>29</sup> HHS, Preventing Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General, 2012.

<sup>30</sup> FDA, Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes, 2013.

<sup>31</sup> NYS Health Department, “Prevention Agenda 2019-2024: Prevent Chronic Diseases Action Plan,” Section 3.1.1, [https://www.health.ny.gov/prevention/prevention\\_agenda/2019-2024/chr.htm#FA3](https://www.health.ny.gov/prevention/prevention_agenda/2019-2024/chr.htm#FA3).

## TOBACCO TAXES AND MEASURES TO CURB “BUTTLEGGING”<sup>32</sup>

The New York State’s cigarette excise tax rate is currently \$4.35 for a package of 20 cigarettes. This rate has been in place since 2010. The New York City applies an additional excise tax of \$1.50 per package of 20 cigarettes.

The state also imposes a tax on tobacco products at a rate of 75 percent of the wholesale price of cigars and tobacco products other than little cigars and snuff. Little cigars are taxed at the same rate as cigarettes, \$4.35 for a package of 20. One package of snuff which weighs an ounce or less is taxed at \$2 per container, for packages weighing more than one ounce, a proportional amount is levied on the snuff in excess of one ounce.<sup>33</sup>

In the decade since the cigarette tax was raised, the impact of the tax has steadily declined. **When considering the inflation rate over that period of time, the \$4.35 tax is the equivalent of \$5.15 today.**<sup>34</sup>

The problem cited most often when considering a tobacco tax increase is its impact on the sales of illegal products. Currently, the state relies on a tax stamp to ensure that tobacco products sold are legal and has its enforcement agents monitor compliance. The Commissioner of Taxation and Finance currently licenses agents to sell stamps for the payment of tax on cigarettes. The agent retains some of the revenues from the sale as commission according to guidelines established by the Tax Commissioner. The Commissioner is also authorized to prescribe a schedule of commissions, not exceeding five percent, to agents for buying and affixing stamps.

Currently, the state relies on a tax stamp system that uses four different colored, numbered, heat-transferred stamps. The stamps have security features including taggants, micro-imaging, stamp numbering, variable image and UV watermarking.<sup>35</sup>

The CDC recommends that states embrace cutting-edge technologies to limit illegal tobacco sales.<sup>36</sup> According to the CDC, “[e]vasion of tobacco excise taxes costs states millions of revenue dollars every year. After the switch to the new high-tech tax stamps, California collected an additional \$110 million dollars in revenue, without raising the excise tax.”<sup>37</sup>

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<sup>32</sup> “Buttlegging” refers to the illegal distribution and sale of cigarettes.

<sup>33</sup> New York State Tax Law, Article 20, see <https://www.tax.ny.gov/bus/cig/cigidx.htm>.

<sup>34</sup> United States Bureau of Labor Statistics, calculator <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=4.35&year1=201007&year2=202003>.

<sup>35</sup> Federation of Tax Administrators, Tax Uniformity, “Tobacco Tax Information By State,” Updated August 2019, p. 386.

<sup>36</sup> United States Centers for Disease Control and Prevention, “STATE System Tax Stamp Fact Sheet,” [https://www.cdc.gov/statesystem/factsheets/taxstamp/TaxStamp.html#anchor\\_1562859962](https://www.cdc.gov/statesystem/factsheets/taxstamp/TaxStamp.html#anchor_1562859962).

<sup>37</sup> From CDC, Boonn A. The Case for High-tech Cigarette Tax Stamp, Campaign for Tobacco Free Kids. January 3, 2013. Accessed March 21, 2013.

The CDC cited three states (California, Massachusetts, and New Jersey) that require the stamp to have a hologram or encrypted image. Three states (California, Michigan, and New Jersey) require a barcode or other scannable code in the tax stamp. Within two years of passing legislation including encrypted tax stamps, California saw a 37% decline in cigarette tax evasion and increased tax revenue of \$110 million.<sup>38</sup>

New York State should embrace these new technologies and use additional tobacco tax revenues to devote more resources to enforcement of its laws.

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<sup>38</sup> From the CDC, 5. McIntosh A. Tobacco tax cheating falls. Sacramento Bee. June 27, 2007.

## BACKGROUND: LUNG CANCER TAKES A TERRIBLE TOLL ON NEW YORK

According to the U.S. Centers for Disease Control and Prevention (CDC), cancer is the second leading cause of death in America.<sup>39</sup> *As seen below, the top five cancer killers account for more than half of all the estimated cancer deaths.*

Breast cancer is the leading form of cancer affecting women, yet, it is not the leading cause of cancer deaths for women. Prostate cancer is a leading cause of cancer in men, but it is not the leading cause of cancer deaths in men. *That terrible distinction belongs to lung cancer.*

### Estimated Number of New Cancer Cases and Cancer Deaths Exceeding 1,000, Calendar Year 2020 in New York<sup>40</sup>

| Type of Cancer       | New Cases | Deaths |
|----------------------|-----------|--------|
| Total, all sites     | 117,910   | 34,710 |
| Lung & Bronchus      | 13,370    | 6,510  |
| Colon & Rectum       | 8,910     | 2,950  |
| Pancreas             | 3,750     | 2,890  |
| Female Breast        | 17,540    | 2,430  |
| Prostate             | 11,470    | 1,850  |
| Liver & IBD          | 2,670     | 1,610  |
| Leukemia             | 4,600     | 1,370  |
| Non-Hodgkin Lymphoma | 5,120     | 1,230  |
| Urinary Bladder      | 5,590     | 1,080  |

As the chart above shows, *one in five of all cancer deaths result from lung cancer.* Lung cancer is deadly, and afflicts men and women alike. It is also a cancer for which we know how to dramatically reduce its incidence: reducing the use of tobacco products.<sup>41</sup>

Today nearly 9 out of 10 cases of lung cancer are caused by smoking cigarettes.<sup>42</sup> Not only are smokers at risk, but even non-smokers can be afflicted by exposure to tobacco smoke. In the U.S., more than 7,300 nonsmoking lung cancer patients die each year from exposure to secondhand smoke alone.<sup>43</sup> As seen below, cancer is not the only

<sup>39</sup> CDC, "Leading Causes of Death," <http://www.cdc.gov/nchs/fastats/leading-causes-of-death.htm>.

<sup>40</sup> American Cancer Society, Cancer Facts & Figures, Supplemental Data, see: <http://www.cancer.org/content/dam/cancer-org/research/cancer-facts-and-statistics/annual-cancer-facts-and-figures/2020/estimated-number-of-new-cancer-cases-and-deaths-by-state-2020.pdf>.

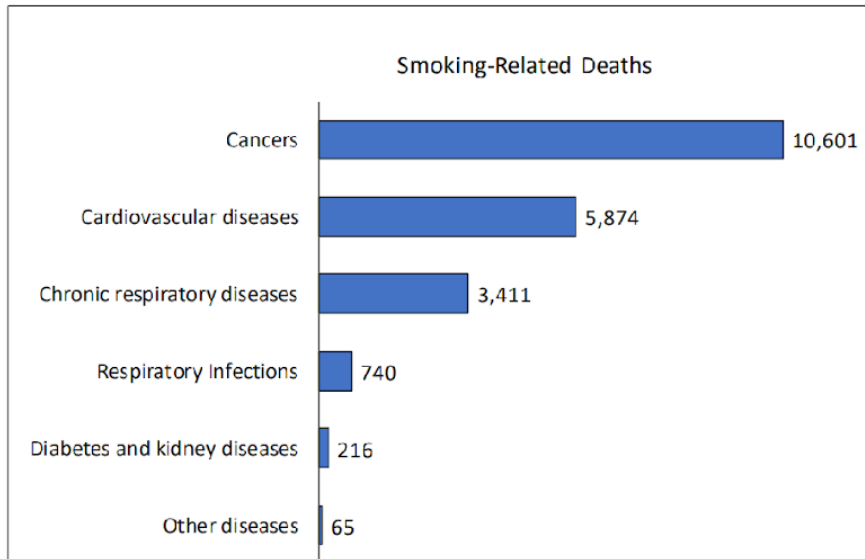
<sup>41</sup> Smoking also causes cancers of the esophagus, larynx, mouth, throat, kidney, bladder, liver, pancreas, stomach, cervix, colon, and rectum, as well as acute myeloid leukemia (1-3). National Cancer Institute, <https://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cessation-fact-sheet#q2>.

<sup>42</sup> "Smoking and Cancer" U.S. Centers for Disease Control and Prevention, Last updated March 23, 2020 <https://www.cdc.gov/tobacco/campaign/tips/diseases/cancer.html>.

<sup>43</sup> CDC, "Secondhand Smoke Facts, 2017": [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm).

health harm caused by tobacco use.<sup>44</sup> Every year, close to 21,000 deaths in New York are caused by smoking-related illnesses.

### Annual Smoking-Related Deaths by Disease Group in NY, 2017



33

Those human costs also result in economic losses.<sup>45</sup>

| Smoking-Caused Monetary Costs in New York   |                       |
|---|-----------------------|
| Annual health care costs in New York directly caused by smoking                   | \$10.39 billion       |
| Medicaid costs caused by smoking in New York                                      | \$6.62 billion        |
| Residents' state & federal tax burden from smoking-caused government expenditures | \$1,345 per household |
| Smoking-caused productivity losses in New York                                    | \$7.33 billion        |

Amounts do not include health costs caused by exposure to secondhand smoke, smoking-caused fires, smokeless tobacco use, or cigar and pipe smoking. Tobacco use also imposes additional costs such as workplace productivity losses and damage to property.

<sup>44</sup> Independent Evaluation of the New York Tobacco Control Program, TCP Advisory Board Meeting, October 10, 2019, Albany, NY. Research Triangle Institute.

<sup>45</sup> Campaign for TobaccoFree Kids, [https://www.tobaccofreekids.org/problem/toll-us/new\\_york](https://www.tobaccofreekids.org/problem/toll-us/new_york).



## CONCLUSION

Despite its successes, New York State has undermined its efforts to curb tobacco use. It has the resources, the science on how to best approach the problem, and even a plan to implement it. Unfortunately, the state's leadership has starved this important program of necessary resources. Based on the total revenue from tobacco taxes since its implementation, New York can, and should be investing more into its tobacco control program. This means expanding public education and treatment efforts, as well as extending taxation to flavored tobacco products.

Moreover, the public health benefits of tobacco taxes have eroded over the past decade. Boosting those taxes will not only keep kids from starting, add revenues to the state, but also add additional resources to programs designed to help tobacco users to quit.

This report should provide policy focus on this important public health challenge and should spur policymakers to act: to ensure that New York's tobacco control efforts meet the standards set by the nation's experts.