

## Tobacco

## 2023 US state tobacco legislation review

## Government Regulations

## New York only state to hike cigarette excise taxes in '23

In 2023, 340 tobacco-related bills were introduced in the 50 US states + Washington DC per Tobacco Merchants Association (TMA). Legislative activity focused on tobacco and vapor product tax increases, restriction of use, licensing, banning of flavored products and issues related to minors. Of the 52 nicotine-related bills that passed into law, just one increased cigarette excise taxes (NY) and 3 increased and/or imposed vapor, cigarette or other tobacco product taxes.

## Three states imposed vapor taxes

On Sept 1, 2023, **New York** (NY) boosted its excise tax on cigarettes by \$1.00/pack to \$5.35, moving NY to the highest cigarette excise tax rate in the country as NY's increase shifted Washington DC down one notch. This was NY's first excise tax hike since 2011 and represents ~2% of national volumes vs. ~6% of the US population given its high incidence of illicit trade. (NY also has the highest cigarette smuggling rate at 55% per the Mackinac Center.) Two states imposed vapor taxes for the first time (**Hawaii** and **Nebraska**), while **Louisiana** increased its tax rate on vapor liquid. Currently 32 states plus Washington DC tax vapor products through specific and/or ad valorem calculations. We expect to see more states to impose taxes on vapor products over time.

## 2024 Watchouts: Final FDA regs on menthol and maximum nicotine levels expected....

Late in 2023, the FDA pushed back anticipated menthol cigarette regulations to March 2024 and announced its intent to provide more info to establish a "maximum nicotine level" in cigarettes in April. Both of these issues are highly political and important to the long-term prospects of the US nicotine category. Once final details are released, we expect manufacturers and other stakeholders to initiate litigation to prevent these rules from being implemented. This litigation will likely delay any such action by the FDA and if/when implemented lead to a large rise in illicit trade given adult consumer demand for flavors and nicotine in cigarettes. To date, 5 states have imposed flavor bans.

## ...but a rise in federal tobacco excise taxes is not

The last federal excise tax increase on most tobacco products was in April 2009, passed by Congress (and President Obama) to fund the State Children's Healthcare Plan (SCHIP). Congress ended 2023 with 14 bills that are tobacco-related, including 4 bills (H.5568/H.5715 and companion bills S.2846/S.2929) that could double cigarette cigarettes and increase other tobacco taxes as well. While we do not anticipate a federal tax boost pre the November election, given that lawmakers do not like to boost taxes (even on smokers) pre-election, but we could see the issue rise if Democrats win seats in the House/ Senate. [Recall that revenue bills must pass through both Congressional houses, but originate in the House.] We would note that vapor products are currently untaxed on the Federal legal (and in some states), which given its youth usage issues, may be more vulnerable than other nicotine products.

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5 states with menthol bans include Massachusetts (2019 e-cigs, 2020 for all other products), New Jersey (2020), New York (2020), Rhode Island (2020), Maryland (2021) and California (2022).

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# 2023 State legislative recap

## Exhibit 1: 2023 nicotine state legislation overview

To date, 42 states have passed Tobacco 21 into state law after it was raised at the federal level in late 2019

Issue	Introduced	# of states	Enacted	# of states	State (enacted)
Cigarette, OTP + Vapor product tax increases	50	18	4	4	New York (cigarettes), Hawaii, Louisiana, Nebraska
E-cig/e-vapor excise tax imposition/increase	36	15	3	3	Hawaii, Louisiana, Nebraska
Local tax levy authorization	0	0	0	0	0
Excise tax modification (OTP)	24	10	4	4	Idaho, Indiana, Montana, and Nevada (all cigar related)
Smoking restrictions	40	22	5	5	Alabama, California, Delaware, Georgia, Illinois
Vaping restrictions	23	15	3	3	Alabama, Georgia, Illinois
Self-service displays	4	3	0	0	0
Tobacco product vending machines	6	3	1	1	New York
Tobacco 21/Minimum sales age (increase)	14	8	1	1	Kansas
Youth tobacco laws (ex. age increase)	19	15	5	4	Nevada, South Carolina, Texas, Washington
Unfair sales (presumptive cost)	0	0	0	0	0
Internet/mail order sales	8	7	1	1	Colorado
MSA compliance	4	4	2	2	North Dakota, Pennsylvania
MSA appropriations	9	6	1	1	Nevada
Tax appropriations	22	16	7	6	Alabama, Colorado (2 bills), Idaho, Louisiana, Montana, Nebraska,
Anti-counterfeiting/anti-smuggling	2	2	1	1	Nevada
Licensing issues	40	23	8	8	Arkansas, Colorado, Hawaii, Louisiana, Maine, North Dakota, South Dakota, Virginia
Flavored tobacco products ban	34	18	1	1	California (adjusted penalties)

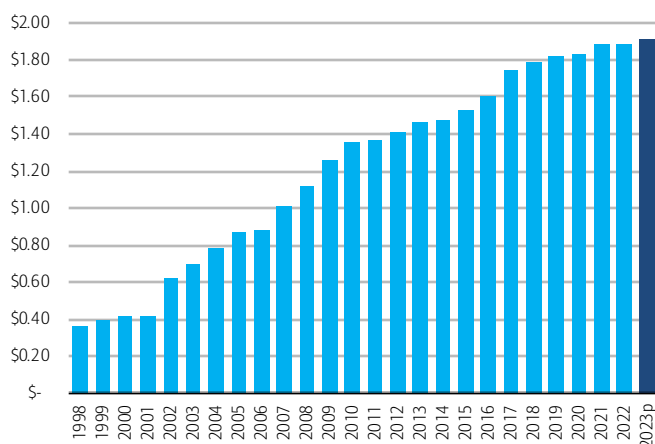
Source: TMA. Note that some bills appear in more than one category and some minor bills don't appear in any category.

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In July 2024, a multi-year excise tax rate bill (passed in 2021) is scheduled to increase Colorado's cigarette excise tax by 30c/pack to \$2.24. In 2022, CO represented 1.4% of cigarette industry volume.

## Exhibit 2: Average state excise taxes on cigarettes (\$/pack)

New York was the only state to lift cigarette excise taxes in 2023

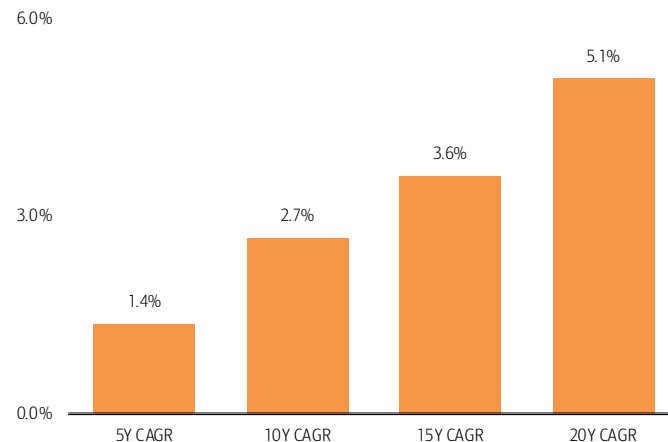


Source: Tobacco Merchants Association, BofA Global Research

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## Exhibit 3: Average annual state excise tax growth rate

In recent years, excise tax growth for cigarettes has been benign



Source: Tobacco Merchants Association, BofA Global Research

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