

THE ALCHEMY OF SIN: TURNING TOBACCO SIN TAX REVENUE
INTO PUBLIC HEALTH GOLD

by
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This Note proposes a reallocation of tobacco excise tax revenue towards health and education programs related to tobacco cessation. Revenue collected from federal excise taxes on tobacco products is currently used to support the daily and long-term operations of the United States while tobacco cessation and education programs remain underfunded and underutilized. This Note examines the history of these “sin taxes,” their modern-day function, and the issues that arise from the current allocation of sin tax revenue to support the argument that revenue from federal sin taxes on tobacco products should be exclusively allocated to a dedicated federal trust fund focused on tobacco control and regulation efforts.

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INTRODUCTION

The United States is facing an unprecedented number of public health crises, from alcoholism to gun violence, health equity to climate change. Despite being thrust into common awareness in 2020 due to the COVID-19 pandemic, the field of public health has been present and active in the United States as far back as the cholera outbreaks of the 1900s.¹ Throughout the history of public health, agencies, organizations, and individuals have been working to mitigate the impact that these crises have on the global populace through a variety of means, including access to healthcare, shifting social perspectives, and legislation.² One such method the United States uses is utilizing existing tax structures to increase the costs of unhealthy behaviors, thereby reducing the incidence of such behaviors.³ These tax increases have colloquially come to be known as “sin taxes.”⁴

In an ideal world, sin taxes would seek to further the cause of reducing social and personal costs associated with unhealthy behaviors, disincentivize individuals from engaging in such behaviors, and generate revenue to be used in the pursuit of public health support services. Unfortunately, this is not necessarily the impact that sin taxes have on the modern landscape of public health or taxation.⁵ Within this intricate system, the issue of sin taxes and their allocation is particularly contentious. While governments have historically introduced sin taxes to discourage unhealthy behaviors and fund public health initiatives, the effectiveness and ethical considerations of such taxes have been questioned by economists, scholars, and the general public.⁶ The allocation of sin tax revenue, specifically, has sparked debate surrounding transparency, accountability, and equitable distribution of funds.⁷ As

¹ See RICHARD J. BONNIE, RUTH GAARE BERNHEIM & DAYNA BOWEN MATTHEW, *PUBLIC HEALTH LAW, ETHICS, AND POLICY: CASES AND MATERIALS*, at iii (2d ed. 2021).

² See discussion *infra* Section I.C.

³ See discussion *infra* Section I.A.

⁴ See discussion *infra* Section I.A.

⁵ See discussion *infra* Part II.

⁶ See discussion *infra* Part II.

⁷ See, e.g., Jean-François Minardi & Francis Pouliot, *The Unintended Consequences of Taxes on Tobacco, Alcohol and Gambling*, MONTREAL ECON. INST., Jan. 2014, at 1.

public health priorities evolve and societal perspectives on taxation change, there is a growing urgency for a comprehensive examination of sin taxes and their revenue allocation.⁸

The examination of sin taxes is of paramount importance to the ever-evolving fields of public health and taxation, which overlap and interact much more than the layperson might expect.⁹ It is within these interactions that unique issues implicating public health, consumer behavior, industry practices, government finances, and the history of taxation in the United States arise. The allocation of revenue generated by sin taxes is a critical aspect of maximizing the impact these taxes have on public health. Although the sin tax itself is marketed as being intended for the deterrence of unhealthy behaviors,¹⁰ the effective utilization of sin tax revenue is essential in addressing underlying health issues, promoting prevention efforts, and ultimately allowing the practice of taxing “sin” to fade into obsolescence.¹¹ However, current revenue allocation practices often fall short of maximizing the potential benefits of sin taxes, leading to many issues and, in some cases, functionally forcing governments to re-incentivize unhealthy behaviors in order to maintain revenue used to support unrelated general funds or government programs.¹² This practice diminishes the intended impact of sin taxes on public health outcomes and undermines efforts to address the underlying health issues associated with the taxed behavior. Moreover, the lack of dedicated funding for services related to the taxed behavior limits the effectiveness of prevention and treatment efforts, perpetuating disparities in access to healthcare and support services.¹³

Because the world of sin taxation is so vast and thoroughly studied, this Note focuses on tobacco sin taxes as a case study against which this Note’s proposal may be explored. It is this author’s goal that, with careful attention and adaptation to the

⁸ TASK FORCE ON FISCAL POL’Y FOR HEALTH, HEALTH TAXES: A COMPELLING POLICY FOR THE CRISES OF TODAY 1, 3 (2024), <https://assets.bbhub.io/dotorg/sites/64/2024/09/Health-Taxes-A-Compelling-Policy-for-the-Crises-of-Today.pdf>; see Robert T. Croyle, *Setting the Stage for the Next Decade of Tobacco Control Research*, NIH: NAT’L CANCER INST. (July 5, 2016), <https://www.cancer.gov/news-events/cancer-currents-blog/2016/tobacco-control-plan>; see also Jeffrey M. Jones, *Americans’ Views of Federal Income Taxes Worsen*, GALLUP (May 19, 2023), <https://news.gallup.com/poll/505970/americans-views-federal-income-taxes-worsen.aspx>.

⁹ See I.R.C. §§ 105, 106 (2018) (discussing employee health and employer-provided health coverage); Daniel Erku, Nigusse Yigzaw, Henok Getachew Tegegn, Coral E. Gartner, Paul A. Scuffham, Yordanos Tegene Garedeu & Ehetemariam Shambel, *Framing, Moral Foundations and Health Taxes: Interpretive Analysis of Ethiopia’s Tobacco Excise Tax Policy Passage*, BMJ GLOB. HEALTH, Oct. 2023, at 3 (“Within the public health community, health taxes may be understood as a population health measure to reduce mortality and morbidity.”).

¹⁰ See discussion *infra* Section I.A.

¹¹ See discussion *infra* Section I.C.

¹² See discussion *infra* Part II.

¹³ See discussion *infra* Part II.

nuances found in related areas, this proposal may be extrapolated and applied to similarly situated sin taxes, such as those on alcohol and sugary beverages. Further, tobacco sin taxes are the ideal background against which to test this proposal, as taxes on tobacco products stretch back further than nearly any other taxed product in United States history, second only to whiskey.¹⁴ Unlike whiskey, however, tobacco use not only poses a serious and significant threat to the health of its users but also to those in the vicinity of its use, as well as those who utilize the same healthcare system as tobacco users.¹⁵

As such, tobacco use places perhaps the most longstanding burden on public health in the United States. The public health field seeks to protect the health of the population through various means, including addressing climate change, advocating for gun safety, tracking disease outbreaks and vaccination statistics, and advocating for law and policy changes.¹⁶ The intersection of tobacco taxation and public health provides the ideal context in which to discuss a shift in the allocation of tobacco tax revenue because more directed funding of tobacco-related public health programs has been proven to have a significant impact on smoking rates and to increase funds available for health programs, such as the Children's Health Insurance Program and Medicaid.¹⁷ Additionally, both the original intention and current marketing of sin taxes reflect a focus on public health outcomes and concern for the health of those who partake in the taxed behavior.¹⁸

In order to maximize the impact of sin taxes on public health outcomes, this Note proposes that revenue generated by federal sin taxes on tobacco products be exclusively allocated to a dedicated federal trust fund focused on tobacco control and regulation efforts, because allocating revenue to unrelated government programs manifests an unhealthy government reliance on such funds, thereby further incentivizing the taxed behavior and running contrary to the taxes' stated purpose.¹⁹ This strategy would improve transparency and accountability in the allocation of sin tax revenue, ensuring that programs and initiatives with the greatest potential to improve public health outcomes and promote fairness in resource distribution receive funds. By directing funds toward prevention, treatment, and support services, this policy reform has the potential to address underlying health issues, reduce disparities in access to healthcare, and promote social welfare.²⁰

¹⁴ ANTHONY A. CILLUFFO, CONG. RSCH. SERV., R46938, FEDERAL EXCISE TAXES: BACKGROUND AND GENERAL ANALYSIS 2 (2021).

¹⁵ See discussion *infra* Section I.C.

¹⁶ *What is Public Health?*, AM. PUB. HEALTH ASS'N, <https://www.apha.org/what-is-public-health> (last visited Jan. 2, 2025).

¹⁷ See discussion *infra* note 35 and accompanying text.

¹⁸ See discussion *infra* Section II.B.1.

¹⁹ See discussion *infra* Part III.

²⁰ See WORLD HEALTH ORGANIZATION [WHO], *The Establishment and Use of Dedicated Taxes for*

This Note proceeds in three parts. Part I provides the reader with relevant history and necessary background information, including definitions of words and terms used throughout this Note, to ensure a solid foundation of understanding. Part II briefly describes how excise taxes on tobacco products function in the modern day, as well as how revenue generated from these taxes is allocated, to illustrate the problematic nature of current allocation practices. Finally, Part III outlines this Note's proposal for the allocation of tobacco excise tax revenue to a dedicated federal trust fund focused on tobacco control and regulation efforts, and addresses both how this proposal affects the problems described in Part II and potential arguments against this Note's proposal.

I. LEGAL FRAMEWORK AND DEFINITIONS

To comprehend the discourse presented within this Note, a thorough understanding of sin taxes and their integration into the American tax system is crucial. This preliminary section assumes the role of an intellectual cornerstone, explaining the foundational concepts and terminologies that underpin later arguments. Exploring the intricacies of sin taxes and the framework within which they exist not only facilitates comprehension of the forthcoming proposal but also equips the reader with the requisite analytical framework to engage critically with the subject matter.

A. *Sin Tax*

Upon advocating for the first sin tax to be levied on whiskey, Secretary of the Treasury Alexander Hamilton “wished to enforce [the sin tax] more as a measure of social discipline than as a source of revenue.”²¹ He elaborated on the harm that excessive drinking caused society, saying, “The consumption of ardent spirits particularly, no doubt very much on account of their cheapness, is carried to an extreme, which is truly to be regretted, as well in regard to the health and the morals, as to the economy of the community.”²²

Sin taxes, a type of excise tax,²³ are commonly used to discourage the public from partaking in behaviors a governing body deems to be unhealthy, such as

Health, at 52–54 (2004), https://hpfhub.info/wp-content/uploads/2021/12/The-establishment-and-use-of-dedicated-taxes-for-health_WHO_2004.pdf; THERESA M. WIZEMANN, EXPLORING TAX POLICY TO ADVANCE POPULATION HEALTH, HEALTH EQUITY, AND ECONOMIC PROSPERITY 22–24 (2019).

²¹ S.E. MORISON, THE OXFORD HISTORY OF THE UNITED STATES 1783–1917, at 182 (1927).

²² ALEXANDER HAMILTON, THE REPORTS OF ALEXANDER HAMILTON 34 (Jacob E. Cooke ed., 1964).

²³ Excise taxes are taxes levied on “certain goods, services, and activities” and may be imposed at various times, including time of sale or use by manufacturers, retailers, or consumers. *Excise Tax*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/excise-tax> (last visited Jan. 2, 2025).

tobacco, sugary drinks, alcohol, and gambling.²⁴ In other words, a sin tax is a tax on “unhealthy behaviors” that the government seeks to regulate or disincentivize the public from partaking in.²⁵ Traditionally, these taxes have served as revenue-raising machines, coming in and out of style as the government’s need for capital ebbs and flows.²⁶ Such taxes have a rich historical lineage and have long been commonplace in the world, originating from laws known as sumptuary laws which can be traced back to before the founding of the United States.²⁷ Sumptuary laws historically were used to create distinctions between social orders and stabilize hierarchies within cultures, but proved difficult to enforce and thus fell into obsolescence.²⁸ In the modern era, sumptuary laws have evolved into modern-day taxation policies aimed at addressing public health concerns and generating revenue.²⁹ These policies have come to be known as sin taxes, as they are meant to target goods and services that are associated with negative behaviors and externalities such as health risks, social harms, and addiction.³⁰

Tobacco sin taxes in the United States encompass a variety of taxes imposed at both federal and state levels, with rates varying depending on the type of tobacco product. Tobacco products that are sold in packs, such as cigarettes and cigars, are

²⁴ Roger Bate, Cody Kallen & Aparna Mathur, *The Perverse Effect of Sin Taxes: The Rise of Illicit White Cigarettes*, 52 APPLIED ECON. 789, 789 (2020); Kristian Stout, *Excise-Tax Reform as a Harm-Reduction Approach to Sports Gambling*, INT’L CTR. FOR L. & ECON. (Oct. 23, 2024), <https://laweconcenter.org/resources/excise-tax-reform-as-a-harm-reduction-approach-to-sports-gambling/>.

²⁵ Rachel E. Morse, *Resisting the Path of Least Resistance: Why the Texas “Pole Tax” and the New Class of Modern Sin Taxes are Bad Policy*, 29 BOS. COLL. THIRD WORLD L. J. 189, 206–07 (2009).

²⁶ See Jendi B. Reiter, *Citizens or Sinners?—The Economic and Political Inequity of “Sin Taxes” on Tobacco and Alcohol Products*, 29 COLUM. J.L. & SOC. PROBS. 443, 444 (1996); David J. DePippo, *I’ll Take My Sin Taxes Unwrapped and Maximized, with a Side of Inelasticity, Please*, 36 U. RICH. L. REV. 543, 545–49 (2002).

²⁷ Robert A. Sirico, *The Sin Tax: Economic and Moral Considerations*, ACTON INST., <https://web.archive.org/web/19990825054517/http://acton.org/publicat/occasionalpapers/sintax.html> (last visited Jan. 2, 2025) (“The use of sin taxes . . . generally date back to before the Founding . . . [L]aws attempting to control sin . . . varied from taxes to outright prohibition. These were known as sumptuary laws, defined as the regulation of extravagance in food, dress, tobacco use, and drinking on religious and other grounds.”).

²⁸ THE RIGHT TO DRESS: SUMPTUARY LAWS IN A GLOBAL PERSPECTIVE, C. 1200–1800, at 1 (Giorgio Riello & Ulinka Rublack eds., 2019); *Sumptuary Law*, ENCYCLOPEDIA BRITANNICA (Feb. 6, 2009), <https://www.britannica.com/topic/sumptuary-law>.

²⁹ Sirico, *supra* note 27; Joohun Han, Khondoker A. Mottaleb, John N. Ng’ombe & Alvaro Durand-Morat, *Does Sin Tax on the Legal Market Facilitate the Illicit Market? An Ex-Ante Assessment on the US Cannabis Market*, 3 J. AGRIC. & APPLIED ECON. ASS’N 330, 330–31 (2024).

³⁰ Jonathan Gruber, *Taxing Sin to Modify Behavior and Raise Revenue*, NAT’L INST. FOR HEALTH CARE MGMT. FOUND.: EXPERT VOICES (Apr. 2010), <https://nihcm.org/publications/taxing-sin-to-modify-behavior-and-raise-revenue>.

taxed by unit, with tax rates ranging from \$0.40 to \$2.11 per pack of twenty.³¹ Tobacco products sold in tins, such as chewing tobacco and snuff, are taxed by weight, with rates ranging from approximately \$0.03 to \$1.55 per one-ounce tin or pouch.³² The states, meanwhile, impose an additional excise tax on tobacco products with rates ranging from less than \$0.50 to \$6.00 depending on the state,³³ a fact that is relevant because it serves to further increase the burden of sin taxes on individual taxpayers.³⁴ These tax rates have been steadily increasing for decades, with several significant tax jumps coinciding with political or administrative policy initiatives.³⁵ Most recently, the Tobacco Tax Equity Act of 2023 was introduced in Congress.³⁶ This Act would serve to increase the excise tax on cigarettes and cigars while equalizing the tax rates among other tobacco products and imposing a tax on nicotine for use in vaping.³⁷

Tobacco excise tax rates tend to fluctuate in response to public opinion, times of war, or health crises,³⁸ and have proven to be particularly effective at generating capital. For example, in 2023, revenue generated by federal excise taxes on tobacco products made up over 13.5% of federal excise tax revenue from all sources, totaling

³¹ *Tax Rates*, ALCOHOL & TOBACCO TAX & TRADE BUREAU, <https://www.ttb.gov/tax-audit/tax-and-fee-rates> (May 9, 2022).

³² *Id.*

³³ *STATE System Excise Tax Fact Sheet*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/statesystem/factsheets/excisetax/ExciseTax.html> (last visited Jan. 2, 2025).

³⁴ For further exploration of the burden sin taxes place on consumers, see discussion *infra* Section II.B.1.

³⁵ For example, in the 1950s, the federal excise tax on tobacco products was raised from seven to eight cents to raise funds for use in the Korean War. INST. OF MED., COMM. ON PREVENTING NICOTINE ADDICTION IN CHILD. AND YOUTHS, *GROWING UP TOBACCO FREE: PREVENTING NICOTINE ADDICTION IN CHILDREN AND YOUTHS* 178 (Barbara S. Lynch & Richard J. Bonnie eds., 1994) [hereinafter *GROWING UP TOBACCO FREE*]. Later, as part of the Tax Equity and Fiscal Responsibility Act of 1982 the tax was doubled to 16 cents, and then later raised to 24 cents under President George H.W. Bush in 1993. *Id.* at 178; Jeffrey E. Harris, *The 1983 Increase in the Federal Cigarette Excise Tax*, 1 TAX POL'Y & ECON. 87, 87 (1987); *Where There's Smoke*, WASH. POST (Dec. 2, 1995, 7:00 PM), <https://www.washingtonpost.com/archive/lifestyle/magazine/1995/12/03/wheres-smoke/f990bbc2-8e74-42d6-80a8-6f2f93bf13ef/>. More recently, the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), which was signed into law by President Obama on February 4, 2009, effectively tripled the federal excise tax on tobacco products with the intent to generate revenue available for use by the Children's Health Insurance Program. Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3, 123 Stat. 8 (2009); BARACK OBAMA & COUNCIL ECON. ADVISERS, *ECONOMIC REPORT OF THE PRESIDENT TOGETHER WITH THE ANNUAL REPORT OF THE COUNCIL OF ECONOMIC ADVISERS* 207–08 (2017).

³⁶ Tobacco Tax Equity Act of 2023, S. 2929, 118th Cong. (2023).

³⁷ *Id.* § 2 (2023) (stating the purpose of the Bill, the types of products to be taxed, and how the tax will change).

³⁸ Depippo, *supra* note 26, at 545–49; Reiter, *supra* note 26, at 444–51.

approximately \$10.3 billion overall.³⁹ These taxes are collected when products leave a manufacturer's premises to be distributed domestically.⁴⁰ Unlike most excise taxes, which are collected by the IRS, tobacco taxes are collected by the U.S. Treasury Department's Alcohol and Tobacco Tax and Trade Bureau.⁴¹

B. *The General Fund and Federal Trust Funds*

Regardless of how an excise tax is collected, the revenue goes to one of two places: the general fund, also known as "America's Checkbook,"⁴² or to a trust fund dedicated to a specific purpose, such as transportation-, environmental-, or health-related spending needs.⁴³ In the case of excise taxes on tobacco products, the revenue is directed into the government's general fund,⁴⁴ where it is then used to "finance the daily and long-term operations of the U.S. Government as a whole."⁴⁵ Despite the substantial revenue generated from tobacco sin taxes, the entirety of these funds are allocated to general funds rather than being specifically designated for public health programs or initiatives addressing tobacco use. This discrepancy plays into a long-standing conflict between the usage of revenue generated by the excise tax on tobacco products and the tax's stated purpose.⁴⁶

Historically, sin taxes have been used by states and the federal government to raise revenue to be used in debt repayment efforts.⁴⁷ In modern times, excise taxes on tobacco products are levied with the intent to support government programs,

³⁹ Calculated by dividing total tobacco excise tax revenue (cell 28CH) by total excise taxes (cell 54CH) for the year 2023. OFF. OF MGMT. & BUDGET, COMPOSITION OF SOCIAL INSURANCE AND RETIREMENT RECEIPTS AND OF EXCISE TAXES: 1940–2029 (2023), https://www.whitehouse.gov/wp-content/uploads/2024/03/hist02z4_fy2025.xlsx.

⁴⁰ *Id.*

⁴¹ *What Are the Major Federal Excise Taxes, and How Much Do They Raise?*, TAX POL'Y CTR., <https://www.taxpolicycenter.org/briefing-book/what-are-major-federal-excise-taxes-and-how-much-money-do-they-raise> (Jan. 2024) ("[A]lcohol and tobacco taxes are collected by the Alcohol and Tobacco Tax and Trade Bureau of the US Treasury Department.").

⁴² *The General Fund*, BUREAU OF THE FISCAL SERV., <https://www.fiscal.treasury.gov/general-fund> (last visited Jan. 2, 2025) ("As 'America's Checkbook,' the General Fund of the Government consists of assets and liabilities used to finance the daily and long-term operations of the U.S. Government as a whole.").

⁴³ See Trust Fund Code of 1981, 26 U.S.C. §§ 9501–11 (listing some existing federal trust funds under the IRC); *What Are the Major Federal Excise Taxes, and How Much Do They Raise?*, *supra* note 41.

⁴⁴ ANTHONY A. CILLUFFO, CONG. RSCH. SERV., IF11941, PROPOSED TOBACCO EXCISE TAX CHANGES IN H.R. 5376, THE RECONCILIATION BILL (Oct. 6, 2021) [hereinafter CILLUFFO, PROPOSED TOBACCO EXCISE TAX CHANGES] (stating that in fiscal year 2020, "Federal tobacco excise taxes . . . raised \$12.4 billion for the General Fund.").

⁴⁵ *The General Fund*, *supra* note 42.

⁴⁶ See discussion *infra* Section II.A.

⁴⁷ Depippo, *supra* note 26, at 545–49.

such as children's healthcare⁴⁸ and combatting the illicit trade of tobacco.⁴⁹ This, however, has expanded beyond mere revenue generation. Beyond funding governmental initiatives, these taxes are strategically employed as a means to deter tobacco consumption, reduce smoking prevalence, and alleviate the burden of tobacco-related diseases on public health systems.⁵⁰ As such, excise taxes on tobacco have become a crucial instrument in the arsenal of tobacco control efforts, aligning fiscal policy with the imperative to safeguard population health and well-being.⁵¹

While the general fund serves as a pool to collect revenue to be used for a broad range of services and programs, federal trust funds are mechanisms used by the federal government in its accounting which serve to track funds that are designated for specific purposes or programs.⁵² Unlike private-sector trust funds, wherein funds are deposited, distributed, and invested by trustees on behalf of a beneficiary, a federal trust fund is simply used to track monetary movement for specific programs.⁵³ Rather than being owned by a beneficiary and used by a trustee, funds in a federal trust fund are owned by the federal government, which manages the assets and earnings of the fund.⁵⁴ Because the government owns these funds, it may

⁴⁸ *Federal Excise Tax Increase and Related Provisions*, ALCOHOL & TOBACCO TAX & TRADE BUREAU, <https://www.ttb.gov/main-pages/federal-excise-tax-increase-and-related-provisions> (Jan. 9, 2019) (explaining how CHIPRA increased federal excise taxes on tobacco products); Letter from Legislative Analyst's Office to Kamala Harris, Att'y Gen. of Cal. (Nov. 30, 2015), <https://www.lao.ca.gov/ballot/2015/150544.pdf>.

⁴⁹ Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3, 123 Stat. 8, 111 (2009) ("Not later than one year after the date of the enactment of this Act, the Secretary of the Treasury shall conduct a study concerning the magnitude of tobacco smuggling in the United States and submit to Congress recommendations for the most effective steps to reduce tobacco smuggling.").

⁵⁰ Frank J. Chaloupka, Ayda Yurekli & Geoffrey T. Fong, *Tobacco Taxes as a Tobacco Control Strategy*, 21 TOBACCO CONTROL 172, 179 (2012) ("Significant increases in tobacco taxes that result in higher tobacco product prices encourage current tobacco users to stop using, prevent potential users from taking up tobacco use and reduce consumption among those that continue to use, with the greatest impact on the young and the poor.").

⁵¹ CHUCK MARR & CHYE-CHING HUANG, CTR. ON BUDGET & POL'Y PRIORITIES, HIGHER TOBACCO TAXES CAN IMPROVE HEALTH AND RAISE REVENUE 2 (2014), <https://www.cbpp.org/sites/default/files/atoms/files/6-19-13tax.pdf>.

⁵² *Budget Basics: Federal Trust Funds*, PETER G. PETERSON FOUND., <https://www.pgpf.org/budget-basics/budget-explainer-what-are-federal-trust-funds> (Aug. 21, 2024) ("A federal trust fund is an accounting mechanism the federal government uses to track earmarked receipts (money designated for a specific purpose or program) and corresponding expenditures.").

⁵³ *Id.* ("In private-sector trust funds, receipts are deposited, and assets are held and invested by trustees on behalf of the stated beneficiaries. In federal trust funds, the federal government does not set aside the receipts or invest them in private assets.").

⁵⁴ OFF. MGMT. & BUDGET, ANALYTICAL PERSPECTIVES: BUDGET OF THE U.S. GOVERNMENT, FISCAL YEAR 2023, at 308 (2022) [hereinafter *Analytical Perspectives: FY 2023*], <https://www.govinfo.gov/content/pkg/BUDGET-2023-PER/pdf/BUDGET-2023-PER.pdf> ("[T]he Federal Government

unilaterally change the law in order to raise or lower collection or payment amounts, or change the purpose for which the collections are used.⁵⁵ Accordingly, because the government may unilaterally change laws to create or fund federal trust funds, it could unilaterally decide to create a trust fund dedicated to supporting public health programs associated with tobacco usage and tobacco control efforts.⁵⁶

Utilizing government funds for specific purposes is exceedingly common and tends to have a high measure of success. Larger federal trust funds are used to budget for and support social insurance programs like Medicare, Social Security, unemployment compensation, military expenditures, retirement benefits, and various infrastructure needs such as highway construction and airway development.⁵⁷ Revenue directed to these funds can come from public contributions, such as through taxes or program premiums, or intragovernmental transfers, such as interest payments made by the Treasury.⁵⁸ This revenue can then be paid out by direct payments either to individual beneficiaries, as is the case with Social Security benefits, or paid out as grants to state and local governments, such as highway and mass transit grants.⁵⁹ Any surplus of income into these federal trust funds adds to the trust fund's balance, which may be utilized either for future expenditures of the trust or loaned to the federal government in order to pay down debts or reduce necessary borrowing.⁶⁰

Of the five major federal trust funds, four are financed at least in part through tax contributions.⁶¹ For example, the Social Security trust funds are funded in part by payroll taxes on employees and employers as well as a portion of income taxes paid on Social Security benefits.⁶² Further, Medicare trust funds, in addition to being funded by payroll and income taxes, receive funds from excise taxes on

owns and manages the assets and the earnings of most Federal trust funds, and can unilaterally change the law to raise or lower future trust fund collections and payments or change the purpose for which the collections are used.”).

⁵⁵ *Id.*

⁵⁶ See DEP'T. TREASURY, FEDERAL TRUST FUND ACCOUNTING GUIDE, at i (2001), <https://www.fiscal.treasury.gov/files/ussgl/fsreports/tfguideall-rev.pdf>.

⁵⁷ *Analytical Perspectives: FY 2023*, *supra* note 54, at 307.

⁵⁸ *Budget Basics: Federal Trust Funds*, *supra* note 52 (“The federal government uses trust fund accounting to link receipts designated by law for a specific purpose with the expenditure of those receipts. Receipts can come from the public (taxes, premiums from program beneficiaries, and other fees) . . .”).

⁵⁹ *Id.* (“Expenditures include, for example, direct payments to individual beneficiaries (e.g., Social Security benefits) or grants to state and local governments (e.g., highway and mass transit grants).”).

⁶⁰ *Analytical Perspectives: FY 2023*, *supra* note 54, at 308–09 (“This surplus of income over outgo adds to the trust fund's balance, which is available for future expenditures.”).

⁶¹ *Id.* at 312.

⁶² *Id.* (“The Social Security trust funds . . . are funded by payroll taxes from employers and employees, interest earnings on trust fund balances, Federal agency payments as employers, and a portion of the income taxes paid on Social Security benefits.”).

manufacturers and importers of prescription drugs.⁶³ This established framework provides a robust foundation for the proposed trust fund dedicated to tobacco-associated public health programs.

C. *Public Health*

Throughout this Note, the phrases “public health,” “public health programs,” “tobacco control,” and “tobacco regulation” will be used. This section serves to provide the reader with explanations and definitions for the foregoing phrases to enhance the reader’s understanding of this Note’s argument and proposal.

Public health is a “science-based, evidence-backed field” that “promotes and protects the health of all people and their communities.”⁶⁴ Generally, these goals are undertaken through collective activity, such as social and community action and the exercising of government power.⁶⁵ The “public” in question tends to cover three levels: individual members of a population, the state and its existing structures, and a population as a community capable of collective action.⁶⁶

Interventions undertaken in the name of public health are generally called “programs.” The Centers for Disease Control and Prevention (CDC) considers programs to be coordinated activities undertaken to achieve an intended, health-positive outcome.⁶⁷ These programs can range from having a widespread impact on populations while requiring relatively low specialized effort, such as addressing socioeconomic factors, to having narrow impacts and requiring high levels of individual effort and specialization, such as counseling and education.⁶⁸ Thus, a public health program, for the purposes of this Note, is a set of related activities undertaken to promote and protect the health of people and communities.

Because this Note is concerned with public health outcomes and programs related to tobacco use, the primary public health programs that will be discussed are tobacco control and regulation efforts. According to the CDC, tobacco use is “the leading preventable cause of disease, death, and disability in the United States.”⁶⁹

⁶³ *Id.* (“[T]he Medicare Hospital Insurance (HI) trust fund is funded by payroll taxes from employers and employees, Federal agency payments as employers, and a portion of the income taxes paid on Social Security benefits.”).

⁶⁴ *What is Public Health?*, *supra* note 16.

⁶⁵ BONNIE, BERNHEIM & MATTHEW, *supra* note 1, at 3.

⁶⁶ *Id.* at 3–4.

⁶⁷ *CDC Approach to Program Evaluation*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/evaluation/php/about/index.html> (Aug. 18, 2024).

⁶⁸ See, for example, the Health Impact Pyramid which offers one model of public health interventions and requisite effort for different programs. BONNIE, BERNHEIM & MATTHEW, *supra* note 1, at 38–39.

⁶⁹ *Cigarette Smoking*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/tobacco/about/index.html> (Sept. 17, 2024).

Tobacco products are “any product containing, made of or derived from tobacco or nicotine,” which can include products such as cigarettes, e-cigarettes, pouches, gummies, and more.⁷⁰ While smoking is the leading cause of most tobacco-related diseases and deaths, with approximately 28.3 million adults in the United States reporting cigarette usage in 2021,⁷¹ secondhand smoke and smokeless tobacco products are serious contributors to the death and disease toll that tobacco products take on the United States population.⁷² Tobacco use can cause cancer, stroke, lung disease, chronic obstructive pulmonary disease (COPD), and diabetes, as well as increase one’s risk of immune system disorders, eye disorders, and tuberculosis.⁷³ Meanwhile, secondhand smoke causes approximately 40,000 deaths of adults and 400 deaths of infants in the United States per year.⁷⁴ Secondhand smoke exposure can cause stroke, coronary heart disease, and lung cancer in adults, and increase the risk of sudden infant death syndrome, severe asthma, slowed lung growth, and acute respiratory infections in infants.⁷⁵ Aside from the impact on the health and lives of individuals who use tobacco and the people around them, tobacco use puts a significant burden on the American healthcare system.⁷⁶ Smoking-related illnesses alone cost the United States upward of \$300 billion each year, both from direct medical care and lost productivity, including losses attributable to secondhand exposure.⁷⁷ These losses directly impact the United States population, as those funds are no longer available to support health issues unrelated to tobacco use.

In response to the risks that tobacco use poses to public health, the federal

⁷⁰ *Health Effects of Smoking and Tobacco Products*, AM. LUNG ASS’N, <https://www.lung.org/quit-smoking/smoking-facts/health-effects> (Nov. 12, 2024).

⁷¹ *Office on Smoking and Health*, CTRES. FOR DISEASE CONTROL & PREVENTION (May 15, 2024), https://www.cdc.gov/tobacco/programs/?CDC_AAref_Val=https://www.cdc.gov/tobacco/about/osh/index.htm (“Based on 2021 data, about 28.3 million U.S. adults smoke cigarettes.”).

⁷² *Cigarette Smoking*, *supra* note 69 (“Secondhand smoke exposure contributes to over 40,000 deaths among nonsmoking adults and 400 deaths in infants each year.”); *Health Effects of Smokeless Tobacco*, CTRES. FOR DISEASE CONTROL & PREVENTION (May 15, 2024), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/smokeless/health_effects/index.htm (“Smokeless tobacco is associated with many health problems,” such as “cancer of the mouth, esophagus, and pancreas,” “diseases of the mouth,” “increase[d] risks for early delivery and stillbirth when used during pregnancy,” and “increase[d] . . . risk for death from heart disease and stroke.”).

⁷³ *Cigarette Smoking*, *supra* note 69.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Sundar S. Shrestha, Ramesh Ghimire, Xu Wang, Katrina F. Trivers, David M Homa & Brian S Armour, *Cost of Cigarette Smoking—Attributable Productivity Losses, U.S., 2018*, 63 AM. J. PREVENTATIVE MED. 478, 478 (2022) (“The economic cost of cigarette smoking exceeds \$300 billion annually in the U.S., including >\$225 billion for direct healthcare spending and >\$156 billion in productivity losses attributable to premature mortality from smoking and exposure to second-hand smoke.”).

government, local and state governments, as well as many independent organizations have instituted tobacco control and regulation programs.⁷⁸ Tobacco control programs take many forms, with use depending on need, population, and region, but generally fall into at least one of four categories: mass media campaigns, smoke-free policies, tobacco price increases, and cessation access.⁷⁹ These programs generally employ CDC-recommended treatments and FDA-approved medications, as well as individual and group counseling, to assist in cessation efforts.⁸⁰

Meanwhile, tobacco regulation procedures may range anywhere from seeking to impact advertising by tobacco companies to cracking down on illicit tobacco trade activity. In one example, the 2009 Family Smoking Prevention and Tobacco Control Act fully authorized the FDA to utilize its regulatory authority against tobacco in the United States.⁸¹ In pursuit of this goal, the FDA may employ regulatory science so as to “[e]stablish sound manufacturing practices . . . [e]xamine the impact of regulatory actions on the exposure of users and non-users of tobacco[,] [c]reate innovative tools for measuring the [harmful] ingredients of various tobacco products . . . [and] [d]evelop surrogate markers for tobacco exposure-related disease development in humans or relevant predictive systems.”⁸²

II. PROBLEMS WITH THE CURRENT ALLOCATION OF SIN TAXES

Sin taxes on tobacco products generate a significant amount of revenue at the federal level in the United States.⁸³ This revenue is placed into the Treasury’s general

⁷⁸ See discussion *infra* Section III.C.

⁷⁹ Mass media campaigns are generally intended to affect the social aspect of tobacco use, such as belief, knowledge, attitude, and behaviors, and may use hard-hitting or graphic images to do so. *Tobacco Control Interventions*, CTRS. FOR DISEASE CONTROL & PREVENTION: ARCHIVE, <https://archive.cdc.gov/#/details?url=https://www.cdc.gov/policy/hi5/tobaccointerventions/index.html> (May 16, 2022). Smoke-free policies are implemented to protect the part of the public that does not use tobacco products by prohibiting smoking in indoor areas as well as certain outdoor locations. *Id.* Increases in price, as discussed in this Note, may serve to decrease the number of people who use tobacco and reduce the amount of tobacco consumed. *Id.* Finally, cessation access serves to increase the population’s collective ability to utilize tools and programs that might aid in quitting tobacco use, such as insurance coverage for evidence-based cessation treatments, quitlines, and integration of tobacco screening and treatment into routine healthcare. *Id.*

⁸⁰ *People with Low Socioeconomic Status Encounter Barriers to Quitting Successfully*, CTRS. FOR DISEASE CONTROL & PREVENTION (May 15, 2024), <https://www.cdc.gov/tobacco/health-equity/low-ses/quitting-tobacco.html> (“Proven treatments, such as U.S. Food and Drug Administration (FDA)-approved medicines and behavioral counseling, make it more likely that people will quit smoking successfully.”).

⁸¹ Lawrence R. Deyton, *FDA Tobacco Product Regulations: A Powerful Tool for Tobacco Control*, 126 PUB. HEALTH REPORTS 167, 167 (2011).

⁸² *Id.* at 168.

⁸³ OFF. MGMT. & BUDGET, ANALYTICAL PERSPECTIVES: BUDGET OF THE U.S. GOVERNMENT, FISCAL YEAR 2024, at 193 (2023) [hereinafter *Analytical Perspectives: FY 2024*],

fund to be used to fund significant government programs such as education, infrastructure, and debt repayment.⁸⁴ However, revenue generated by excise taxes on tobacco products is volatile and variable, resulting in unstable revenue streams and causing recipients that rely on such funds to have inconsistent support. Further, such reliance on funds generated by federal tobacco excise taxes runs contrary to the tax's stated purpose and ultimately incentivizes the continuation of unhealthy behaviors, which results in a regressive tax structure and poor public health outcomes. This section serves to provide the reader with the information necessary to understand some of the problems that arise due to current allocation practices of tobacco excise tax revenue.

The federal government's reliance on revenue from tobacco sin taxes is fundamentally flawed due to the unstable nature of such revenue sources, which fail to provide consistent and reliable income generation.⁸⁵ This dependence on tobacco taxes not only exposes the government to financial volatility but also undermines long-term fiscal sustainability, as fluctuations in tobacco consumption and market dynamics can lead to revenue shortfalls. This reliance inadvertently creates a perverse incentive structure whereby the government is financially incentivized to perpetuate tobacco consumption, contradicting the very public health objectives the tax is intended to serve.⁸⁶ Essentially, reliance on tobacco tax revenue for general fund purposes sacrifices the health of the public in favor of consistent revenue streams.

A. *The General Fund*

Although successful at producing revenue, excise taxes on tobacco products are highly volatile, unpredictable, and vulnerable, leading to inconsistencies in federal budgets. Despite federal taxation rates rising in 2009, revenue collected from these taxes has been declining since 2010, with Congressional Budget Office projections indicating that this trend will continue.⁸⁷ Looking to state trends as an example, it is clear that tax rate spikes cause a short jump in revenue, followed by a consistent, and generally steep, drop in revenue.⁸⁸ Just as fluctuations in taxation rates can be linked to "alternating periods of war and peace,"⁸⁹ fluctuations in tobacco tax

<https://www.govinfo.gov/content/pkg/BUDGET-2024-PER/pdf/BUDGET-2024-PER.pdf>.

⁸⁴ See discussion *supra* Section I.B.

⁸⁵ TAXEDU, CASE STUDY 3: SALES VS. EXCISE TAXES: COMPARING THE EFFECTS OF SALES TAXES AND TOBACCO TAXES WITH REAL POLICY EXAMPLES 2 (n.d.), <https://files.taxfoundation.org/20220112140935/TaxEDU-Case-Study-3-Sales-Taxes-vs-Excise-Taxes.pdf>.

⁸⁶ Sirico, *supra* note 27.

⁸⁷ Alan Cole, *Federal Tobacco Tax Revenues are Declining*, TAX FOUND. (May 8, 2015), <https://taxfoundation.org/blog/federal-tobacco-tax-revenues-are-declining>.

⁸⁸ Adam Hoffer, *How Stable is Cigarette Tax Revenue?*, TAX FOUND. (May 23, 2023), <https://taxfoundation.org/data/all/state/cigarette-tax-revenue-tool>.

⁸⁹ GROWING UP TOBACCO FREE, *supra* note 35, at 178 ("[T]he federal tax on cigarettes has

revenue can be linked to the steady decrease in tobacco consumption since the 1980s,⁹⁰ inflation,⁹¹ and illegal trade of tobacco products.⁹²

Another instability in federal tax revenue stems from market shifts intended to avoid increases in tobacco taxes. Since the 2009 enactment of the Children's Health Insurance Program Reauthorization Act (CHIPRA), which created tax disparities between various tobacco products, manufacturers and consumers have shifted to lower-taxed products to avoid taxation.⁹³ According to the Government Accountability Office (GAO), losses in federal revenue due to market shifts from higher-taxed to lower-taxed products between 2009 and 2018 range from approximately \$2.5 to \$3.9 billion.⁹⁴ Although GAO suggests that equalizing the tax rate for tobacco products would stabilize and increase federal tobacco tax revenue,⁹⁵ it is more likely that, if historical trends are to continue, though revenue may increase for a short time, patterns of market shifts for the purpose of tax avoidance would continue and revenue would continue to decrease.⁹⁶

Relying on the revenue generated by federal tobacco taxes ultimately undermines long-term fiscal sustainability because it introduces instability to the federal general fund, which supports much of the federal government's programs and incentives, not the least of which is children's healthcare.⁹⁷ Continued reliance on such volatile funds begs the question: Why should the rest of the American

fluctuated in response to the revenue requirements of the government, corresponding mainly to alternating periods of war and peace.”).

⁹⁰ *Id.* at 182 (“The decline in revenues from tobacco taxes partly reflects a steady drop in per capita cigarette consumption since the mid-1970s.”).

⁹¹ *Id.* at 183 (“As a result of inflation, declining consumption, and identification of other revenue sources, tobacco taxes at both the federal and state levels now account for a significantly smaller share of total revenues compared to 40 years ago.”).

⁹² *Id.* at 178–79 (“Differences in cigarette tax rates among states and localities can create problems in the enforcement of tax laws . . . [For example,] casual smuggling . . . commercial smuggling for resale, and illegal diversion of cigarettes within the traditional distribution system by forging tax stamps and underreporting.”).

⁹³ U.S. GOV'T ACCOUNTABILITY OFF., TOBACCO TAXES (2019), <https://www.gao.gov/assets/gao-19-467-highlights.pdf> (“Specifically, CHIPRA created tax disparities between roll-your-own and pipe tobacco and between small and large cigars, creating opportunities for tax avoidance and leading manufacturers and consumers to shift to the lower-taxed products.”).

⁹⁴ *Id.* (“GAO estimates that federal revenue losses due to market shifts from roll-your-own to pipe tobacco and from small to large cigars range from a total of about \$2.5 to \$3.9 billion from April 2009 through September 2018 . . .”).

⁹⁵ *Id.* (“Federal revenue would likely increase if Congress were to equalize the tax rate for pipe tobacco with the rates currently in effect for roll-your-own tobacco and cigarettes.”).

⁹⁶ *State Tobacco Tax Increases: Explanations and Sources for Projections of New Revenues & Benefits*, AM. CANCER SOC'Y: CANCER ACTION NETWORK (Jan. 4, 2024), <https://www.fightcancer.org/policy-resources/state-tobacco-tax-increases-explanations-and-sources-projections-new-revenues>.

⁹⁷ See Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3, 123 Stat. 8 (2009).

populace suffer because the government insists on utilizing a tax with such a narrow base?⁹⁸ As one economist put it, “The needs of children remain even as revenue from tobacco taxes declines.”⁹⁹

Although the current marketing of sin taxes on tobacco products indicates that the purpose of the taxes is to disincentivize tobacco usage, the allocation of revenue generated by these taxes and use of these funds does not speak to the same purpose. For example, despite the federal government bringing in approximately \$11.6 billion of revenue from excise taxes on tobacco products in 2023,¹⁰⁰ the CDC, which is “the only federal agency that provides funding to help support all 50 states, the District of Columbia, 8 U.S. territories, and 26 tribes/tribal organizations for tobacco control efforts,” only spent about \$85 million in tobacco control efforts in 2024.¹⁰¹ In other words, an amount equal to less than 1% of the revenue generated by federal excise taxes on tobacco products is used to support tobacco control efforts, which include anti-tobacco mass media campaigns and access to cessation support.¹⁰²

Further, despite collecting billions of dollars in tobacco tax revenue and settlements from lawsuits against cigarette companies, states are allocating less than 3% of those funds to tobacco control and cessation efforts.¹⁰³ The reasons for this allocation failure vary from state to state, though, ultimately, the cause remains the same: When the available funding is free to be spent on other necessary, potentially more urgent, expenditures, it is difficult to justify sending the money elsewhere.¹⁰⁴

⁹⁸ “A broad-based tax is one that taxes most of the potential tax base . . . one that applies to almost all purchases of goods and services. A narrow-based tax applies to fewer items.” INST. ON TAX’N & ECON. POL’Y, TAX POLICY NUTS AND BOLTS: UNDERSTANDING THE TAX BASE AND TAX RATE (2011), <https://itep.sfo2.digitaloceanspaces.com/pb50bolts.pdf>. Tobacco excise taxes, on the other hand, are narrow-based because they apply to only a specific type of good that only a portion of the population may purchase. *Id.*

⁹⁹ Cole, *supra* note 87.

¹⁰⁰ *Analytical Perspectives: FY 2024*, *supra* note 83, at 193.

¹⁰¹ *National Tobacco Control Program Funding*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/tobacco/php/tobacco-control-programs/program-funding.html> (Nov. 18, 2024).

¹⁰² *Tobacco Control Interventions*, *supra* note 79 (“Effective population-based commercial tobacco control interventions include tobacco price increases, high-impact anti-tobacco mass media campaigns, comprehensive smoke-free policies, and cessation access.”).

¹⁰³ *Economic Trends in Tobacco*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 17, 2024), <https://www.cdc.gov/tobacco/php/data-statistics/economic-trends/index.html> (“States receive billions of dollars to prevent smoking and help smokers quit. The money comes from tobacco product taxes and settlements from lawsuits against cigarette companies. However, states only use a small amount of this money for tobacco prevention.”); *Broken Promises to Our Children*, CAMPAIGN FOR TOBACCO-FREE KIDS, <https://www.tobaccofreekids.org/what-we-do/us/statereport> (Dec. 18, 2024) (“This year (fiscal year 2025), the states will collect \$22.1 billion from the 1998 tobacco settlement and tobacco taxes. But they will spend just 3.5% of it . . . on tobacco prevention and cessation programs.”).

¹⁰⁴ *15 Years Later, Where Did All the Cigarette Money Go?*, NPR (Oct. 13, 2013, 5:52 PM),

In 2025, states are set to collect over \$22 billion in tax revenue and settlement funds, but will spend only \$764.8 million on tobacco prevention and cessation efforts—less than a quarter of the total funding recommended by the CDC.¹⁰⁵ At present, only one state, Maine, funds tobacco prevention and cessation programs at the CDC-recommended levels.¹⁰⁶ According to the CDC, it would only cost about \$3.3 billion—roughly 15% of collected federal funds—to fund every state’s tobacco control program at CDC-recommended levels.¹⁰⁷

B. *Subsequent Consequences*

As a result of the foregoing allocation issues, a host of subsequent consequences arise, including inequity in impact on the population, an increase in black-market activity, and the development of an unholy alliance between the federal government and tobacco tax revenue.¹⁰⁸ This section illustrates the impact faulty revenue allocation can have on populations in terms of both health and socioeconomic wellness in order to highlight the significance of the issue at hand.

1. *Inequity*

Sin taxes on tobacco products are, in and of themselves, regressive. This is an analysis that, although divisive, is rooted firmly in reality and relies on a great deal of empirical data.¹⁰⁹ Beyond the regressive nature of the tax itself, however, lies a greater issue—inequity in the allocation of the raised revenue. Current allocation practices of revenue raised by excise taxes on tobacco products lead to differential benefits of invested revenue, causing many populations within the United States to be unfairly burdened by tobacco taxes without the balancing factor of accessible government programs.¹¹⁰

Generally, the overarching concept of taxation in the United States is meant to be “fairness.”¹¹¹ This is commonly understood to mean non-discriminatory treatment of individuals of similar situation or background, and differential tax

<https://www.npr.org/2013/10/13/233449505/15-years-later-where-did-all-the-cigarette-money-go>.

¹⁰⁵ *Broken Promises to Our Children*, *supra* note 103.

¹⁰⁶ Aside from Maine, only eight states provide more than half of the CDC-recommended funding. These are, in order of highest to lowest percentage: Utah, Oklahoma, Delaware, Oregon, North Dakota, California, Hawaii and Alaska. *Id.*; *Economic Trends in Tobacco*, *supra* note 103 (“The CDC recommends that states, in total, spend \$3.3 billion on tobacco prevention.”).

¹⁰⁷ *Economic Trends in Tobacco*, *supra* note 103.

¹⁰⁸ See discussion *infra* Section II.B.2–3.

¹⁰⁹ Christopher Snowdon, *Of Course Sin Taxes Are Regressive*, INST. ECON. AFFS. CURRENT CONTROVERSIES, July 2018, at 12–13.

¹¹⁰ Reiter, *supra* note 26, at 467.

¹¹¹ *Id.* at 460–61; *What the Right to a Fair and Just Tax System Means for Taxpayers*, IRS, <https://www.irs.gov/newsroom/what-the-right-to-a-fair-and-just-tax-system-means-for-taxpayers> (Apr. 26, 2024).

burdens depending on an individual's ability to pay.¹¹² However, excise taxes in general tend to break from this mold, overburdening low-income individuals whose income is largely spent on consumption rather than investment or taxation.¹¹³ Individuals, for example, whose income is too low to even be taxed, still must pay for groceries, toiletries, gas, and clothing, which are generally subject to sales tax, effectively bringing their income, which the federal government considers too inconsequential to be brought into the tax base, into play.¹¹⁴ Further, taxes on corporations rather than consumers have a functionally identical effect, as these costs are simply passed through to consumers rather than being paid by the corporations themselves.¹¹⁵

When it comes to tobacco excise taxes, the problems are no different. In fact, consumers bear most of the burden of tobacco taxes.¹¹⁶ With the federal excise tax structure as it is, "consumers bear a greater burden under [the] federal tax than they do under a state or local excise tax," as local taxes can be avoided by consuming in areas with lower tax rates.¹¹⁷ Although nominally meant to discourage tobacco use, tobacco sin taxes function instead as a sort of "user fee," allowing anyone who can afford to pay the higher rates to continue their tobacco use with little difficulty, while lower-income individuals or those for whom paying the higher rates would not be so easy are forced to either discontinue their tobacco use or turn to black-market tobacco products.¹¹⁸ Low-income and marginalized communities make up the majority of the smoking population in the United States, making this pay-to-play structure disproportionately burdensome on those populations.¹¹⁹

These discrepancies continue into the realms of tobacco cessation, regulation, and education. It is well documented that, when increases in tobacco prices or taxes

¹¹² These concepts are commonly called Horizontal and Vertical equity, respectively. Reiter, *supra* note 26, at 461.

¹¹³ *Id.* ("For such individuals, a large share of that income is spent on consumption, making [a sin] tax's impact on them especially great.").

¹¹⁴ *Id.* ("To begin with, all sales taxes are somewhat regressive in that they bring into the tax base individuals whose income is so low that it is not even taxed.").

¹¹⁵ *Id.* ("A tax at the level of the corporation producing the cigarettes or liquor, instead of a sales tax, would have essentially similar effects because these costs would just be passed down to the consumer.").

¹¹⁶ *Id.* at 461–62.

¹¹⁷ This is a common way that illicit tobacco trade occurs, as individuals will buy in low tax areas and sell them for lowered prices in high tax areas. Paul G. Barnett, Theodore E. Keeler & Teh-wei Hu, *Oligopoly Structure and the Incidence of Cigarette Excise Taxes*, 57 J. PUB. ECON. 457, 466–68 (1995).

¹¹⁸ Reiter, *supra* note 26, at 463 ("[S]in taxes operate in effect as a prohibition which can be escaped for a fee. Lower-income users are economically compelled to desist, while those who can afford to absorb the extra costs suffer no real constriction of their range of consumption choices.").

¹¹⁹ *Id.* at 459, 463 ("[S]mokers from the working-class spend more of their income on cigarettes than smokers who are professionals." (internal citations omitted)).

are not enough to disincentivize tobacco use, cessation programs, substance abuse treatment, and media campaigns can help individuals end their own tobacco use.¹²⁰ However, access to healthcare, access to treatment programs, and social determinative factors are massive barriers that many individuals face in seeking to cease tobacco use.¹²¹ Low-income individuals, as well as individuals who have attained lower levels of education, are much more likely to use tobacco products than other, differently situated individuals.¹²² Other related factors, such as unequal access to resources, healthcare, and services also greatly increase an individual's likelihood of using tobacco products.¹²³

Among the resources that low-income and low-education individuals lack access to are evidence-based cessation treatments and services that assist individuals in tobacco use cessation.¹²⁴ Research shows that individuals who access and utilize these programs are much more successful in terms of tobacco use cessation than individuals who do not.¹²⁵ However, these programs are not widely available, accessible, or covered by many individuals' healthcare. For example, in 2018, approximately 6.7 million individuals who used tobacco products reported being enrolled in Medicaid.¹²⁶ Although these individuals were just as likely, if not more

¹²⁰ *Effectiveness of Tax and Price Policies for Tobacco Control*, 14 IARC HANDBOOKS OF CANCER PREVENTION: TOBACCO CONTROL 337 (2011) [hereinafter *Effectiveness of Tax*] (“[F]unding for cessation treatment programmes and media campaigns can help those quit who have not been induced by [tobacco taxes] to quit . . .”).

¹²¹ *Health Disparities Related to Commercial Tobacco and Advancing Health Equity: An Overview*, CTRS. FOR DISEASE CONTROL & PREVENTION (May 15, 2024) [hereinafter *Health Disparities*], <https://www.cdc.gov/tobacco-health-equity/about/>.

¹²² Bridgette E. Garrett, Shanta R. Dube, Stephen Babb & Tim McAfee, *Addressing the Social Determinants of Health to Reduce Tobacco-Related Disparities*, 17 NICOTINE & TOBACCO RSCH. 892, 892 (2015) (“[P]rogress in reducing smoking prevalence has been markedly slower among populations of low socioeconomic status (SES) as characterized by low incomes, low levels of education, unemployment, and blue-collar and service industry workers.”).

¹²³ *Id.* at 893–94 (“While low education and income are the main SDH [Social Determinants of Health] that can determine increased tobacco use, other related SDH such as the unequal distribution of resources, power, and services can also lead to inequities in tobacco prevention and control and subsequent disparities in tobacco use.”).

¹²⁴ *Id.* at 894 (“[O]ther related SDH . . . include the unequal distribution of resources for tobacco control and limited access to health care services, including limited access to evidence-based cessation treatments and services.”).

¹²⁵ *People with Low Socioeconomic Status Encounter Barriers to Quitting Successfully*, *supra* note 80 (“Proven treatments, such as U.S. Food and Drug Administration (FDA)-approved medicines and behavioral counseling, make it more likely that people will quit smoking successfully.”); *Evidence-Based Cessation Treatment*, NIH: NAT’L CANCER INST., <https://progressreport.cancer.gov/prevention/tobacco/cessation-aids> (Mar. 2024).

¹²⁶ Anne DiGiulio, Zach Jump, Stephen Babb, Anna Schecter, Kisha-Ann S. Williams, Debbie Yembra & Brian S. Armour, *State Medicaid Coverage for Tobacco Cessation Treatments and Barriers to Accessing Treatments—United States, 2008–2018*, 69 MORBIDITY & MORTALITY WKLY.

likely, to want to stop using tobacco products,¹²⁷ they were much less likely to succeed in quitting.¹²⁸ Additionally, if intervention measures are not implemented with the intention of being equitable and increasing access for underserved populations, they may actually worsen existing disparities.¹²⁹ For example, shifting the social response to tobacco use, or the use of certain tobacco products, may cause already marginalized populations who use those products to face more discrimination, stereotyping, and exclusion.¹³⁰

Further, social pressures make it much more difficult for individuals of low-income or marginalized backgrounds to stop using tobacco products.¹³¹ Studies have shown that lower-income communities are less likely to support smoke-free air laws or policies.¹³² Similarly, blue-collar and service workers are much less likely to benefit from mandated smoke-free workplace policies, and are also less likely to participate in voluntary smoke-free policies.¹³³ Discrimination, poverty, and many other social conditions exert massive amounts of pressure that can make individuals more likely to use tobacco products and exacerbate related health problems.¹³⁴ Many marginalized populations need more protection from exposure to secondhand

REP. 155, 159 (2020) (“Approximately 6.7 million adult smokers report being enrolled in Medicaid, accounting for approximately 20% of adult U.S. cigarette smokers.”).

¹²⁷ *People with Low Socioeconomic Status Encounter Barriers to Quitting Successfully*, *supra* note 80 (“Most people who smoke want to quit, and more than half try to do so each year In 2015, an estimated 56% of adults who live below the poverty level and smoke cigarettes tried to quit smoking, compared to 55% of those living at or above the poverty level.”).

¹²⁸ *Id.* (“In 2015, few (nearly 30%) adults living below the poverty level reported using proven treatments to quit smoking Also in 2015, fewer uninsured people who smoked received advice from a health care professional to quit smoking or used proven treatment to quit than those with private insurance.”).

¹²⁹ Garrett et al., *supra* note 122, at 894 (“Nevertheless, in order for tobacco control interventions to be equitable and to realize their full potential, they need to be implemented in ways that offer all populations the opportunity to experience changes in social norms that have proven to be instrumental in reducing the burden of tobacco use.”).

¹³⁰ *Id.* at 892–94 (“[L]ow SES also interacts with a complex array of other factors [I]nclude[ing] race/ethnicity, cultural characteristics, . . . [and] social marginalization” Further, “it is important that [an approach to changing social norms] does not lead to stigmatization of smokers who belong to groups that are already marginalized.”).

¹³¹ *Health Disparities*, *supra* note 121 (“The pressures of discrimination, poverty, and other social conditions can increase commercial tobacco use and make health problems worse.”).

¹³² Garrett et al., *supra* note 122, at 894 (“Findings show that lower-income communities may be less likely to adopt local smoke-free laws”).

¹³³ *Id.* (“[S]ervice and blue-collar employees may be less likely to be protected by legislated or voluntary smoke-free workplace policies.”).

¹³⁴ *Health Disparities*, *supra* note 121 (“Disparities in [tobacco use, health outcomes, and access to treatment] exist based on where people live, the type and amount of employment and health insurance they have, and other social and demographic factors such as race, ethnicity, age, sexual orientation, disability status, level of education, income, and/or behavioral health status.”).

smoke and other tobacco-related environmental factors than they are afforded.¹³⁵ When compared to individuals with private insurance, individuals who use tobacco and are enrolled in public healthcare programs are much more likely to suffer from chronic illnesses and severe psychological distress.¹³⁶

2. *Black-Market Activity*

As tobacco tax rates increase, so too do instances of illicit tobacco trade activity. In many states with high tax rates on tobacco products, there is substantial black-market movement of products from low-tax states to high-tax states.¹³⁷

For example, in 2020 in New York, which has one of the highest state tax rates on tobacco products, over 53% of consumed cigarettes were of illicit or smuggled origin.¹³⁸ With the increase in internet sales activity, as well, comes many issues in terms of consistent taxation of tobacco products. Many websites offer tobacco products either tax-free, or with taxes from low-rate jurisdictions.¹³⁹ On average, a website selling cigarettes in the United States “passes about 90% of the tax savings through to the consumer,” which causes the prices to be substantially lower than in brick-and-mortar stores and prevents the federal government from collecting associated revenue.¹⁴⁰

Rather than simply move tobacco products from low-tax to high-tax states to be sold, some smugglers develop and sell counterfeit products with the look and feel of legitimate and regulated brands.¹⁴¹ Because these products are not subject to the quality control or standards imposed on regulated products, they are far more likely

¹³⁵ *Id.* (“Population groups need more protections from exposure to secondhand smoke. Some groups encounter barriers to health care and treatment for tobacco use and dependence.”).

¹³⁶ DiGiulio et al., *supra* note 126, at 160 (“Compared with smokers with private health insurance, smokers enrolled in Medicaid have been found to be more likely to have chronic diseases and to experience severe psychological distress.”).

¹³⁷ *Fact Sheet—Tobacco Enforcement*, ATF (June 2024), <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-tobacco-enforcement> (“Tobacco traffickers purchase cigarettes and other tobacco products from low tax states and localities and sell them in higher tax states.”).

¹³⁸ Todd Nesbit & Michael D. LaFaive, *Taxes Have Made New York Into an Empire of Cigarette Smuggling*, WALL ST. J. (Mar. 10, 2023, 5:34 PM), <https://www.wsj.com/articles/taxes-have-made-new-york-into-an-empire-of-cigarette-smuggling-avoidance-evasion-flavor-revenue-hochul-f2b11e15> (“In 2020 we found that New York’s smuggling rate exceeded 53%—the highest in the nation.”).

¹³⁹ *Effectiveness of Tax*, *supra* note 120, at 315.

¹⁴⁰ *Id.*

¹⁴¹ Ulrik Boesen, *Cigarette Taxes and Cigarette Smuggling by State*, 2018, TAX FOUND. (Nov. 24, 2020), <https://taxfoundation.org/data/all/state/cigarette-taxes-cigarette-smuggling-2020> (“One way that criminals grow their profits is by avoiding the legal market completely. They produce counterfeit cigarettes with the look and feel of legitimate brands and sell them with counterfeit tax stamps.”); Te-Ping Chen, *China’s Marlboro Country*, CTR. FOR PUB. INTEGRITY (June 29, 2009), <https://publicintegrity.org/health/chinas-marlboro-country>.

to include dangerous components like heavy metals.¹⁴² Not only does this put consumers at individual risk and cause the government to lose out on potential revenue, but it also places a significant burden on the American healthcare system.¹⁴³

This is a well-known global issue, and one that many nations across the planet have been working together to curb. Two international treaties currently in force describe the legal obligations for parties that have ratified them “with the overall goal of curbing the tobacco epidemic”:¹⁴⁴ the WHO Framework Convention of Tobacco Control (FCTC)¹⁴⁵ and the Protocol to Eliminate Illicit Trade in Tobacco Products (Protocol).¹⁴⁶ The FCTC provides measures for effective tobacco control, to diminish tobacco use and exposure to secondhand smoke,¹⁴⁷ while the Protocol expands on the FCTC’s mission by focusing on the reduction and elimination of illicit tobacco trade activity.¹⁴⁸ Some ways it aims to do this is through supply chain controls and express measures to establish a global track-and-trace system.¹⁴⁹

However, despite its apparent distaste for the tobacco black market and illicit

¹⁴² R. S. Pappas, G.M. Polzin, C.H. Watson & D.L. Ashley, *Cadmium, Lead, and Thallium in Smoke Particulate from Counterfeit Cigarettes Compared to Authentic US Brands*, 45 FOOD & CHEM. TOXICOLOGY 202, 207 (2007) (“In some cases, these counterfeit brands deliver quantities of heavy metals more than an order of magnitude higher than the comparable authentic brands. These data suggest that smokers could receive significantly higher exposures to various toxic and carcinogenic metals from counterfeit cigarettes than from the comparable authentic cigarettes . . .”).

¹⁴³ See *North Korea: Illicit Activity Funding the Regime: Hearing Before the Fed. Fin. Mgmt., Gov’t Info., and Int’l Sec. Subcomm. of the Comm. on Homeland Sec. and Governmental Affs.*, 198th Cong. 41 (2006) (prepared statement of Peter Prahar, Bureau for Int’l Narcotics and L. Enf’t Affs.) (“One cigarette company estimates that the U.S. federal government and state governments lose about \$736,000 (weighted average) in revenue for each 40-foot shipping container of illicit cigarettes entering the United States.”); U.S. DEPT. OF THE TREAS., DEPARTMENT OF THE TREASURY REPORT TO CONGRESS ON FEDERAL TOBACCO RECEIPTS LOST DUE TO ILLICIT TRADE AND RECOMMENDATIONS FOR INCREASED ENFORCEMENT 4 (2010), <https://www.ttb.gov/system/files/images/pdfs/tobacco-receipts.pdf>; NAT’L RSCH. COUNCIL & INST. OF MED., UNDERSTANDING THE U.S. ILLICIT TOBACCO MARKET 4–5 (Peter Reuter & Malay Majmundar eds., 2015).

¹⁴⁴ WORLD TRADE ORGANIZATION, INTERNATIONAL EXPORT REGULATIONS AND CONTROLS: NAVIGATING THE GLOBAL FRAMEWORK BEYOND WTO RULES 78 (2023) [hereinafter EXPORT REGULATIONS AND CONTROLS], https://www.wto.org/english/res_e/booksp_e/international_exp_regs_e.pdf.

¹⁴⁵ WHO Framework Convention on Tobacco Control, *opened for signature* June 16, 2003, 2302 U.N.T.S. 166 (entered into force Feb. 27, 2005).

¹⁴⁶ Protocol to Eliminate Illicit Trade in Tobacco Products, *opened for signature* Jan. 10, 2013, 3276 U.N.T.S. (entered into force Sept. 25, 2018).

¹⁴⁷ EXPORT REGULATIONS AND CONTROLS, *supra* note 144, at 78–79.

¹⁴⁸ *Id.* at 79, 81, 83.

¹⁴⁹ *Id.*

tobacco trade activity, the United States has signed only the FCTC¹⁵⁰ and has ratified neither,¹⁵¹ meaning that these treaties impart neither legal obligations nor support from other nations on the United States in regard to control of illicit tobacco trade activity.¹⁵²

3. *Unholy Alliance*

Although the stated purpose of excise taxes on tobacco products is to reduce the prevalence of tobacco use in the American population, use of revenue from these taxes necessitates the continued use of tobacco by Americans, lest the federal government lose out on a significant amount of revenue.¹⁵³ Aside from obvious contradictions with public health objectives indicated by these taxes and supported by health and anti-tobacco organizations around the world,¹⁵⁴ failure to utilize this revenue as part of a “comprehensive strategy for reducing tobacco use” conflicts with many experts’ recommendations as to how to make tobacco excise taxes effective long-term.¹⁵⁵ This results in a perpetual loop, wherein smoking-related healthcare costs continue to burden the federal general fund,¹⁵⁶ the federal government responds by increasing tobacco tax rates to raise necessary revenue, tobacco use decreases which results in less revenue generation, necessary government programs lose out on anticipated funding, and the government is required to either raise the

¹⁵⁰ *WHO Framework Convention on Tobacco Control*, U.N. TREATY SERVS., https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=ix-4&chapter=9&clang=_en (last visited Jan. 25, 2025).

¹⁵¹ *Id.*; *Protocol to Eliminate Illicit Trade in Tobacco Products*, U.N. TREATY SERVS., https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=ix-4-a&chapter=9&clang=_en (last visited Jan. 25, 2025).

¹⁵² Martin A. Rogoff, *The International Legal Obligations of Signatories to an Unratified Treaty*, 32 ME. L. REV. 263, 266–67 (1980); see *WHO Framework Convention on Tobacco Control*, *supra* note 145, at 36, ¶ 2; *Protocol to Eliminate Illicit Trade in Tobacco Products*, *supra* note 146, at 45.

¹⁵³ Reiter, *supra* note 26, at 433–34; see *Tobacco Tax Revenue and Forecast in the United States from 2000 to 2028*, STATISTA, <https://www.statista.com/statistics/248964/revenues-from-tobacco-tax-and-forecast-in-the-us/> (Nov. 18, 2024).

¹⁵⁴ See, e.g., Ann Boonn, *Raising Tobacco Taxes: A Win-Win-Win*, CAMPAIGN FOR TOBACCO-FREE KIDS (Dec. 20, 2024), <https://assets.tobaccofreekids.org/factsheets/0385.pdf>; *Raising Taxes on Tobacco*, WORLD HEALTH ORG., <https://www.who.int/activities/raising-taxes-on-tobacco> (last visited Jan. 3, 2025).

¹⁵⁵ *Raising Taxes on Tobacco*, *supra* note 154 (“Best practices in tobacco taxation policy include . . . [i]mplement[ing] tobacco taxation as part of a comprehensive strategy for reducing tobacco use.”).

¹⁵⁶ Shrestha et al., *supra* note 77, at 478 (“The economic cost of cigarette smoking exceeds \$300 billion annually in the U.S., including >\$225 billion for direct healthcare spending and >\$156 billion in productivity losses attributable to premature mortality from smoking and exposure to second-hand smoke.”).

taxes further or find more individuals to partake in taxation.¹⁵⁷

Ultimately, although research may show that higher tobacco excise taxes decrease tobacco use, when the revenue from these taxes is being used to support unrelated government programs rather than related public health programs, no true progress can be made in the pursuit of reducing tobacco use because the government finds itself relying on unstable revenue streams that it cannot afford to surrender.

III. PROPOSAL

This Note proposes a shift in allocation of tobacco sin tax revenue from the general fund to a trust fund dedicated exclusively to public health programs associated with tobacco use and control. The current system, which funnels these funds into the general fund, lacks the necessary specificity and targeted approach needed to combat tobacco-related health issues comprehensively. By redirecting these resources to a dedicated trust fund exclusively earmarked for public health programs associated with tobacco use and control, several key advantages can be realized. Such a shift would reduce the government's reliance on volatile revenue streams, provide support for reducing illicit tobacco trade activity, dismantle the unholy alliance between tobacco tax revenue and necessary public programs funded through the general fund, and more effectively address the inequity of regressive tax structures and lack of access to prevention, cessation, and education efforts.

This proactive approach not only aligns with broader public health objectives but also demonstrates a commitment to addressing the root causes of tobacco-related harm. By prioritizing the establishment of a dedicated trust fund, policymakers can signal their recognition of the urgent need to tackle tobacco use head-on, ultimately leading to improved health outcomes and a healthier society overall.

This Part will proceed by first addressing the mechanism through which this shift may take place. Next, it will address the current problems described in Part II and explore how this proposal effectively resolves or supports those problems. Finally, this Part will discuss potential counterarguments to this proposal and responses to said arguments.

A. *Mechanism*

As discussed in Part I of this Note, revenue collected from excise taxes may be funneled into one of two locations: the general fund, or a trust fund.¹⁵⁸ Drawing on the success of existing federal trust funds, such as those supporting social insurance programs like Medicare and Social Security, this proposal leverages tax

¹⁵⁷ See Bruce Bartlett, *Taxing Sin: A Win-Win for Everyone?*, 128 TAX NOTES 1289 (Sept. 20, 2010).

¹⁵⁸ See discussion *supra* Section I.B.

contributions and excise taxes on tobacco products to finance targeted public health interventions by creating a federal trust fund in which tobacco tax revenue may be placed. Congress may elect to create a federal trust fund for this purpose by adding a section to the United States Code or the Internal Revenue Code.¹⁵⁹ Federal trusts of this nature, such as the Highway Trust Fund,¹⁶⁰ the Unemployment Trust Fund,¹⁶¹ and the Airport and Airway Trust Fund,¹⁶² have been created many times throughout United States history. The new section will include how funds are to be distributed, necessary expenditures, and other administrative details.¹⁶³

Although it has been argued that federal trust funds are simply ways for current Congresses to require future Congresses to fund politically motivated programs, the truth of the matter is that the primary source of income for federal trusts are users and future users.¹⁶⁴ For example, in 2012, 76% of the total income of the Disability Insurance Trust Fund came from taxes withheld from payrolls.¹⁶⁵ Likewise, a federal trust fund for tobacco tax revenue would be primarily funded by the funds generated through taxation of tobacco products. By directing revenue into the proposed trust fund, resources can be effectively allocated to prevention, cessation, and education programs, as well as to support infrastructure needs essential for comprehensive tobacco control efforts. The surplus income generated can contribute to the trust fund's long-term sustainability or be utilized to alleviate government debt burdens.

B. Solutions

Successful application of this Note's proposal would provide efficient long-term solutions to the problems with current allocation practices for tobacco tax revenue, as described in Part II.¹⁶⁶ Although implementation of this proposal may be neither simple nor immediate, this Section aims to illustrate how the creation of a federal trust fund for tobacco tax revenue, with allocation focused on tobacco control and regulation programs, would help to resolve the issues currently facing the federal government due to current allocation practices.

¹⁵⁹ MINDY R. LEVIT & THOMAS HUNGERFORD, CONG. RSCH. SERV., R41328, FEDERAL TRUST FUNDS AND THE BUDGET 1 (2014); *see also Frequently Asked Questions and Glossary*, OFF. OF THE L. REVISION COUNS., <https://uscode.house.gov/faq.xhtml> (last visited Jan. 3, 2025) ("In the case of a positive law title, only Congress can add a section to, or amend a section of, the title, but if Congress enacts a provision the subject of which relates closely to that of an existing section, the editors of the Code may set the provision out as a statutory note under that section.").

¹⁶⁰ Trust Fund Code of 1981, 26 U.S.C. § 9503.

¹⁶¹ 42 U.S.C. § 1101.

¹⁶² Trust Fund Code § 9502.

¹⁶³ *See, e.g., id.* §§ 9501–11.

¹⁶⁴ LEVIT & HUNGERFORD, *supra* note 159, at 1.

¹⁶⁵ *Id.*

¹⁶⁶ *See* discussion *supra* Part II.

1. *The General Fund*

Not only would this shift be easily done through unilateral government imposition of a dedicated trust fund for tobacco tax revenue, but it would ultimately allow for more consistency and predictability in federal budgeting matters.¹⁶⁷ With a reliable source of funding for tobacco control initiatives, government agencies and programs can better plan and execute long-term strategies to combat tobacco use and its associated health risks. Moreover, the stability afforded by the trust fund structure enables agencies to invest in sustainable, evidence-based interventions that yield lasting public health benefits. Implementation of a federal trust fund for all tobacco tax revenue would allow both the federal government and tobacco control organizations to have increased consistency in their budgeting, which will allow for more long-term stability and budgetary forecasting.

The approach of dedicating revenue generated from tobacco tax revenue to related health programs has been successfully utilized by many countries, such as Costa Rica and Colombia.¹⁶⁸ Costa Rica, after ratifying the FCTC in 2008, adopted the General Law for the Control of Tobacco and its Harmful Effects on Health in 2012, which regulates the tobacco industry within Costa Rica, including advertising, packaging, promotion, and smoke-free locations.¹⁶⁹ As part of this regulation, the law also sets standards for tobacco taxation and significantly increased the tax burden on cigarettes.¹⁷⁰ Under this law, the revenue generated from these increased tobacco taxes was set aside in specific portions for use, with over 80% of revenue being reinvested into public health programs and health ministries relevant to tobacco related health outcomes.¹⁷¹ As a result, the rates of smoking in both adults and adolescents dropped rapidly, tobacco-related healthcare costs decreased, and, in 2018, cigarette production within Costa Rica was closed.¹⁷²

¹⁶⁷ See discussion *supra* Section II.A.

¹⁶⁸ See *Use of Earmarked Tobacco Taxes in Countries that Reported Earmarking Parts of Their Excise Taxes or Excise Tax Revenues for Health Purposes*, WORLD HEALTH ORG., <https://www.who.int/data/gho/data/indicators/indicator-details/GHO/use-of-earmarked-tobacco-taxes-in-countries-that-reported-earmarking-parts-of-their-excise-taxes-or-excise-tax-revenues-for-health-purposes> (Dec. 15, 2023); PATRICIO V. MARQUEZ, KONSTANTIN KRASOVSKY & TATIANA ANDREEVA, WORLD BANK GRP, GLOB. TOBACCO CONTROL PROGRAM, COSTA RICA: OVERVIEW OF TOBACCO USE, TOBACCO CONTROL LEGISLATION, AND TAXATION (2019), <https://openknowledge.worldbank.org/server/api/core/bitstreams/911476a8-066d-5746-a510-16643cae9c88/content>; *Countries Share Examples of How Tobacco Tax Policies Create Win-Wins for Development, Health and Revenues*, WORLD HEALTH ORG. (Apr. 12, 2021) [hereinafter *Countries Share Examples of Tobacco Tax Policy Wins*], <https://www.who.int/news-room/feature-stories/detail/countries-share-examples-of-how-tobacco-tax-policies-create-win-wins-for-development-health-and-revenues>.

¹⁶⁹ MARQUEZ, KRASOVSKY & ANDREEVA, *supra* note 168, at 3.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 13–14.

¹⁷² *Id.* at 3.

Similarly, Colombia, after ratifying the FCTC, tripled its specific tax rate on cigarettes between 2016 and 2018 as part of a large-scale fiscal reform initiative, with revenue earmarked for Universal Healthcare Coverage.¹⁷³ This reform caused cigarette consumption to drop by 34%, as well as increased revenue to be invested in healthcare coverage for the population.¹⁷⁴

The results of these dedicated allocations of tobacco tax revenue are no coincidence. For governments to truly cut down on a population's tobacco use, multiple interventions must be used concurrently and with respect for the intersectional nature of tobacco use and cessation.¹⁷⁵ The examples provided above demonstrate the success of implementing tobacco taxes to fund specific and related public health programs by illustrating both an increase in general revenue through decreased healthcare costs and lost productivity, and a decrease in tobacco use among the populace.

2. *Subsequent Consequences*

By prioritizing resources towards marginalized communities disproportionately affected by tobacco-related health disparities, this proposal not only promotes health equity but also advances social justice objectives, helping to ensure that all individuals have equitable access to preventive measures and cessation support, regardless of socio-economic status or demographic background. In order for tobacco control programs to be equitable and effective, it is necessary that they be implemented in such a way that all populations may benefit from their work.¹⁷⁶ By increasing funding and creating dedicated funding streams for tobacco control programs nationwide, more populations and communities across the country would be able to benefit from tobacco control efforts and more individuals would be able to decrease or eliminate their own tobacco use.

A major factor in tobacco control and individual cessation is the change in social norms that have “proven to be instrumental in reducing the burden of tobacco use.”¹⁷⁷ These social norm shifts, or population-based tobacco control interventions, operate effectively when they are paired within the context of a

¹⁷³ *Countries Share Examples of Tobacco Tax Policy Wins*, *supra* note 168; RTI INT'L, U.N. DEVELOP. PROGRAMME, WHO FCTC SECRETARIAT & PAN AM. HEALTH ORG., THE CASE FOR INVESTING IN WHO FCTC IMPLEMENTATION IN COLOMBIA 9 (2019), https://www.undp.org/sites/g/files/zskgke326/files/migration/co/UNDP_Co_PUB_POB_COLOMBIA_FCTC_EN_Jan27_2020.pdf.

¹⁷⁴ *Countries Share Examples of Tobacco Tax Policy Wins*, *supra* note 168.

¹⁷⁵ Garrett et al., *supra* note 122, at 894–95.

¹⁷⁶ *Id.* at 894 (“[I]n order for tobacco control interventions to be equitable and to realize their full potential, they need to be implemented in ways that offer all populations the opportunity to experience changes in social norms that have proven to be instrumental in reducing the burden of tobacco use.”).

¹⁷⁷ *Id.*

“comprehensive tobacco control program.”¹⁷⁸ Such a program might include raising the per-unit price on tobacco products, enforcing smoke-free air laws and policies, carrying out mass-media campaigns, increasing access to evidence-based cessation treatments, and restricting promotion of tobacco products by tobacco companies.¹⁷⁹ Providing funding and mandating that these funds be used for these stated purposes would allow federal tobacco control programs to begin to equalize access to clean air and tobacco control programs, more effectively and equitably protecting populations regardless of any social determinants that might put them at higher risk of tobacco use.

Further, by directing funds towards prevention, control, and cessation efforts, this proposal aims to undermine the economic incentives driving illicit tobacco trade, thereby safeguarding public health and promoting compliance with legal channels of distribution. Research has shown that prevention and reduction of illicit tobacco trade activity may increase the economic benefits of increased tobacco taxes, as well as the public health benefits of higher overall prices.¹⁸⁰ Effective reduction of illicit tobacco trade activity will require the participation of local, state, and federal government agencies, including law enforcement and tax administrators.¹⁸¹

Although many methods of illicit tobacco regulation have been suggested, such as prominent tax stamps, as utilized in the European Union,¹⁸² a generally accepted model for a comprehensive approach to reducing illicit tobacco trade activity in the United States includes enhanced coordination and enforcement efforts, strengthened penalties for those engaged in illicit tobacco trade activity, implementation of a track-and-trace system, and more intensive public education efforts.¹⁸³ By adopting the proposal this Note posits, the United States could more effectively fund tobacco control and regulation efforts. Implementation and enforcement of strong and concentrated efforts to control illicit tobacco trade

¹⁷⁸ *Id.* at 894–95.

¹⁷⁹ *Id.*

¹⁸⁰ FRANK J. CHALOUPKA, SARAH MATTHES EDWARDS, HANA ROSS, MEGAN DIAZ, MARIN KURTJ, XIN XU, MIKE PESKO ET AL., PREVENTING AND REDUCING ILLICIT TOBACCO TRADE IN THE UNITED STATES 7 (2015), <https://www.cdc.gov/tobacco/stateandcommunity/pdfs/illicit-trade-report-508.pdf> (“Extensive research demonstrates the effectiveness of tax and price policies in reducing tobacco use and its health and economic consequences.” (citations omitted)).

¹⁸¹ *Id.* at 6.

¹⁸² Luk Joossens & Martin Raw, *Smuggling and Cross Border Shopping of Tobacco in Europe*, 310 BMJ 1393, 1396 (1995) (“An approach that combines reducing demand and controlling supply is the use of prominent tax stamps on cigarette packs to show that they are legally imported and have had duty paid.”).

¹⁸³ CHALOUPKA et al., *supra* note 180, at 23 (“In many cases, the success of one intervention depends on the implementation of others (e.g., state licensing of all involved in tobacco distribution, stamping tobacco products, and increased enforcement of these measures are necessary for effective implementation of a national tracking-and-tracing system).”).

activity would greatly increase the effectiveness of tobacco excise taxes in reducing the harm tobacco use poses to public health in the United States.¹⁸⁴ Clear government commitment, however, is essential to the success of such measures.¹⁸⁵ Increases in tobacco taxes will continue to be undermined in their revenue-raising efforts without some level of centralized, funded effort to reduce supply and access to illicit tobacco products.¹⁸⁶ Dedicated, consistent funding streams, as provided by a federal trust for tobacco tax revenue, are a decent step towards more consistent and harmonized regulation efforts of illicit tobacco trade activity in the United States.

Finally, eliminating the financial incentive tied to tobacco revenue removes government reliance on tobacco use, aligning taxation with its intended purpose of promoting public health.¹⁸⁷ Utilizing revenue generated by tobacco taxes exclusively for associated tobacco regulation and public health programs allows the federal government to break the loop of necessary tobacco use by reducing, and ultimately, eliminating its reliance on such funds for unrelated government expenditures. This would both allow the United States to fall more closely in line with experts' recommendations as to how tobacco tax revenue should be utilized, as well as make it possible for tobacco tax revenue to drop correlatively with tobacco usage.

C. *Addressing Counterarguments*

The argument could be made that this proposal redirects money away from important government programs, such as children's health insurance.¹⁸⁸ However, application of this Note's proposal will ultimately reduce necessary government spending on healthcare costs associated with tobacco use, thereby increasing the amount of available funds that can be directed toward any programs that are currently being funded by tobacco excise taxes. The ultimate goal of this proposal is not to rob vital government programs of necessary funds, but rather to address the underlying public health concerns that put strain on such programs and reduce their burdens, increasing the funding available for such programs to use.

On the local, state, and federal levels, evidence shows that increased investment in tobacco control and regulation programs leads to reductions in overall healthcare costs. On the local level, an anti-smoking campaign in New York City led to over

¹⁸⁴ *The Economics of Tobacco and Tobacco Control*, NAT'L CANCER INST. TOBACCO CONTROL MONOGRAPH SERIES, Dec. 2016, at 507, 536 ("Experience from many countries demonstrates that illicit trade can be successfully addressed, even when tobacco taxes and prices are raised, and curbing illicit trade results in increased tax revenues and reduced tobacco use rates.").

¹⁸⁵ *Id.* ("Government commitment to combating illicit trade is essential.").

¹⁸⁶ See discussion *supra* Section II.B.2.

¹⁸⁷ See discussion *supra* Section II.B.3.

¹⁸⁸ See discussion *supra* note 35 and accompanying text.

\$864 million in healthcare savings.¹⁸⁹ From 2015 to 2019, the New York City Health Department invested in targeted advertisements meant to encourage tobacco cessation.¹⁹⁰ Not only did these media campaigns cause nearly 8,000 individuals to successfully quit using tobacco and prevent more than 1,000 deaths, but it also showed a return on investment of \$32 for every \$1 spent.¹⁹¹ Over the campaigns four-year life, that is a savings of over \$216 million a year for the city of New York.¹⁹²

In California, as a state-level example, every dollar spent by the California Tobacco Control Program resulted in a decrease of \$231 in healthcare costs.¹⁹³ The California Tobacco Control Program, which originated in 1989 with the increase in tobacco excise taxes in California, funded anti-tobacco media campaigns and community programs which were intended to increase public health and decrease smoking populations in California.¹⁹⁴ Three decades later, California's smoking population has dropped from approximately 22% to 10%, and the state has saved over \$816 billion in associated healthcare costs.¹⁹⁵ Over thirty years, this amounts to over \$2.86 billion saved every year, which can be reinvested in the California population, or returned directly to consumers.¹⁹⁶

Finally, at the federal level, the CDC conducted a public education campaign known as Tips From Former Smokers between 2012 and 2018, and saved over \$7.3 billion in healthcare-related costs.¹⁹⁷ This program was intended to motivate

¹⁸⁹ NYC DEP'T HEALTH & MENTAL HYGIENE, SAVING LIVES, SAVING COSTS: KEY OUTCOMES OF THE CITY'S ANTI-SMOKING ADS 3 (2022), <https://www.nyc.gov/assets/doh/downloads/pdf/smoke/anti-smoking-campaign-outcomes-2015-2019.pdf>.

¹⁹⁰ *Id.* at 2.

¹⁹¹ *Id.* at 2–3.

¹⁹² *Id.* at 2.

¹⁹³ Cameron Scott, *California's Anti-Smoking Push Spurs Big Savings on Health Costs*, UNIV. OF CAL. S.F. (Mar. 16, 2023), <https://www.ucsf.edu/news/2023/03/424991/californias-anti-smoking-push-spurs-big-savings-health-costs> (“For every dollar California spent on smoking control, health care costs fell by \$231.”).

¹⁹⁴ *Id.* (“In the late 1980s . . . California boosted its tax on cigarettes from 10 to 35 cents a pack, devoting 5 cents to programs to prevent smoking. The newly created California Tobacco Control Program funded anti-tobacco media campaigns and community programs to try to improve public health . . .”).

¹⁹⁵ *Id.* (“Over three decades that witnessed historic lawsuits and expanding smoking bans, California's smoking population fell from 21.8% in 1989 to 10% in 2019 California has seen a significant decrease in its smoking population over the last three decades, along with total health care savings of \$816 billion.”).

¹⁹⁶ *Id.* (“Over the 30-year history of the program, Californians pocketed \$51.4 billion they would otherwise have spent on cigarettes.”).

¹⁹⁷ Sundar S. Shrestha, Kevin Davis, Nathan Mann, Nathaniel Taylor, James Nonnemaker, Rebecca Murphy-Hoefer, Katrina F. Trivers et al., *Cost Effectiveness of the Tips From Former Smokers® Campaign—U.S., 2012–2018*, 60 AM. J. PREVENTATIVE MED. 406, 407 (2021) (“Tips®

smokers to quit by sharing the lived experiences of individuals with tobacco-related health consequences.¹⁹⁸ From 2012 to 2018, the Tips From Former Smokers program was “associated with an estimated 129,100 premature deaths avoided, 803,800 life years gained, 1.38 million quality-adjusted life years gained . . . [and] an estimated 642,200 campaign-associated lifetime quits.”¹⁹⁹ Over those six years, this program resulted in savings of approximately \$1.22 billion per year.²⁰⁰

With clear results that show directing increased funds towards tobacco control programs returns a significant investment, it can be safely surmised that similar long-term investment through dedicated allocation of tobacco excise tax revenue would result in similar savings on tobacco-related healthcare costs. These savings will be able to be allocated to any programs that may lose funding with the movement of tobacco excise tax revenue.

Further, this Note does not suggest an immediate switch in how tobacco tax revenue is allocated, but rather a slow and incremental shift from the general fund to a dedicated federal trust fund. This deliberate shift would allow for healthcare savings to be allocated and distributed to programs before said programs may lose a significant amount of funding and would provide time for the government to find alternative revenue streams where necessary.

CONCLUSION

This Note argues for significant policy change, proposing that tobacco sin tax revenue be allocated to a federal trust fund specifically dedicated to advancing important public health initiatives, emphasizing the tangible impact of tobacco on both individuals and society. The analysis presented herein sheds light on the heavy burden that tobacco use places on the United States public health systems and society as a whole. It highlights the suffering caused by tobacco-related illnesses, as well as the social and economic inequalities it exacerbates. Redirecting tobacco tax revenue towards targeted programs for prevention, cessation, and intervention represents more than just a policy adjustment—it is a way to address pressing issues head-on and to tackle socioeconomic disparities and health inequalities directly, turning a moment of crisis into an opportunity for lasting change.

This author envisions a future where the assets that once served to fuel the tobacco industry in its pursuit of nationwide addiction now fuel a revolution in public health—a future where smoking cessation services offer hope, public

campaign lifetime quits were estimated to reduce healthcare spending by \$11.0 billion, resulting in estimated net healthcare sector cost savings of \$7.3 billion after accounting for the costs of campaign implementation and evaluation and for the cessation treatment costs.”).

¹⁹⁸ *Id.* at 406 (“*Tips From Former Smokers*® public education campaign . . . motivates smokers to quit by featuring people living with the real-life health consequences of smoking.”).

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

education campaigns combat misinformation, and youth prevention initiatives build resilience in the next generation. The path towards optimal public health is as much about the journey as it is the destination; it is about the lives new initiatives impact, the families spared of grief and loss, and the communities united in pursuit of a common good. Through the strategic allocation of resources, the United States stands to pave the way for a tobacco-free future, where health, equity, and opportunity thrive together.