



Electronic Cigarette Substance and Nicotine Product Tax Restricted Account

STATE OF UTAH
Population Health
September 30, 2022

To: Social Services Appropriation Subcommittee
From: Braden Ainsworth, Tobacco Prevention and Control Program
Subject: Electronic Cigarette Substance and Nicotine Product Tax Restricted Account Report

Purpose

H.B. 7, Item 102

The Legislature intends that the Department of Health and Human Services report in collaboration with the Tax Commission, Public Safety, State Board of Education, and local health departments, to the Social Services Appropriations Subcommittee by October 1, 2022 on projected shortfalls in the Electronic Cigarette Substance and Nicotine Product Tax Restricted Account and potential solutions.

Executive Summary

It is projected that the appropriations from the Electronic Cigarette Substance and Nicotine Product Tax Restricted Account will be less than appropriated in FY22. Revenue appears to have picked up with increased knowledge and compliance from manufacturers, and with the inclusion of other nicotine products in 2021. Revenue has not yet reached initial projected levels. The Department of Health and Human Services (DHHS), Utah State Tax Commission, and other funded partners will work closely on ways to strengthen the fund.

Fund Description

In 2020, the Legislature enacted and amended provisions relating to electronic cigarette products and nicotine products. [SB 37 \(2020 GS\)](#). It created the Electronic Cigarette Substance and Nicotine Product Tax Restricted Account, a restricted account within the General Fund. The legislation also imposes an excise tax on the sale of certain electronic cigarette products and alternative nicotine products at a rate of .56 multiplied by the manufacturer's sale price. The Electronic Cigarette portion of the tax began to be collected July 1, 2020, and the tax on Alternative Nicotine Products began on July 1, 2021.

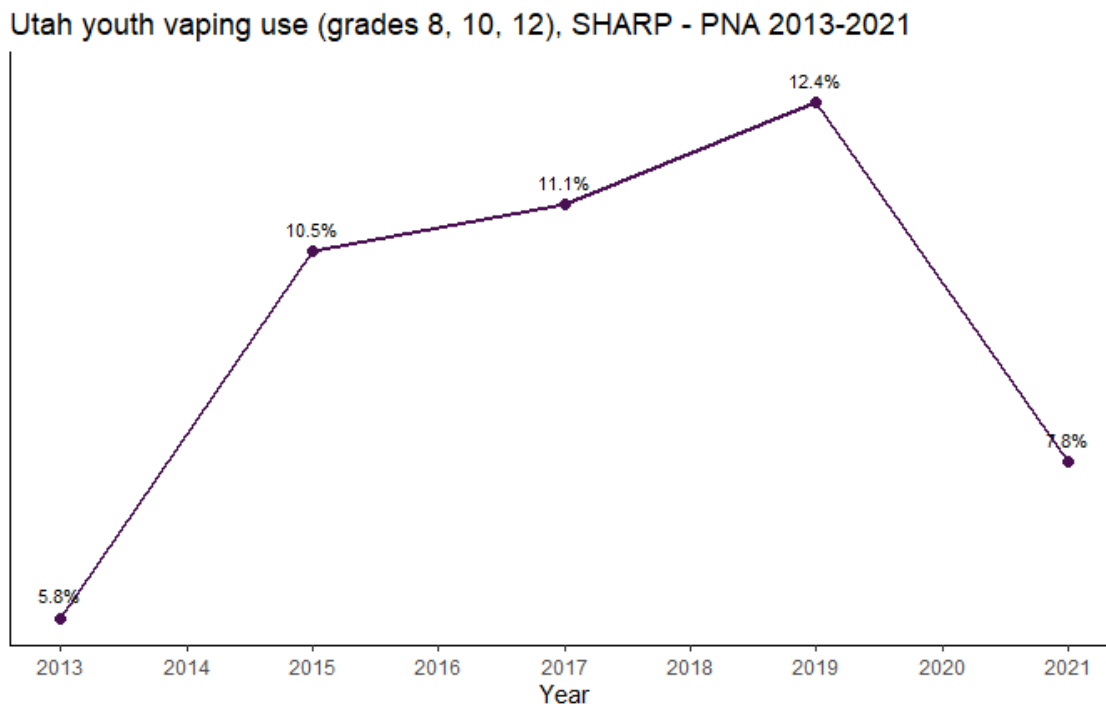
The restricted account funds a number of activities designed to educate, regulate and enforce use of e-cigarette products. These activities include the establishment of the Youth Electronic

Cigarette, Marijuana, and Other Drug Prevention Program (YEMOP) within the Department of Health and Human Services as well as the YEMOP Committee. Similarly, the State Board of Education utilizes funds to implement school-based prevention programs. Money in the account is used to implement the programs created in [UCA 59-14-807](#).

It also creates a grant program operated by local health departments (LHD), as well as providing funding for LHD enforcement activities. The Department of Public Safety utilizes restricted account funds to disrupt organizations and networks that provide nicotine products and other illegal controlled substances to minors. The fund also provides funding for Additional information can be found in the [Compendium of Budget Information](#).

Impact

The Electronic Cigarette Substance and Nicotine Product Tax Restricted Account is unique in that all of the revenue is appropriated to efforts directly related to the reduction of youth vape and substance use. In 2021, youth reported the lowest rate of current vaping since 2013. The rate dropped to 7.8% (see table below). A number of factors could be contributing to this recent decline; however, there is a correlation between the reduction in youth vaping and the establishment of the restricted accounts and its accompanying programs. All agencies receiving appropriations are coordinated and invested in this effort.

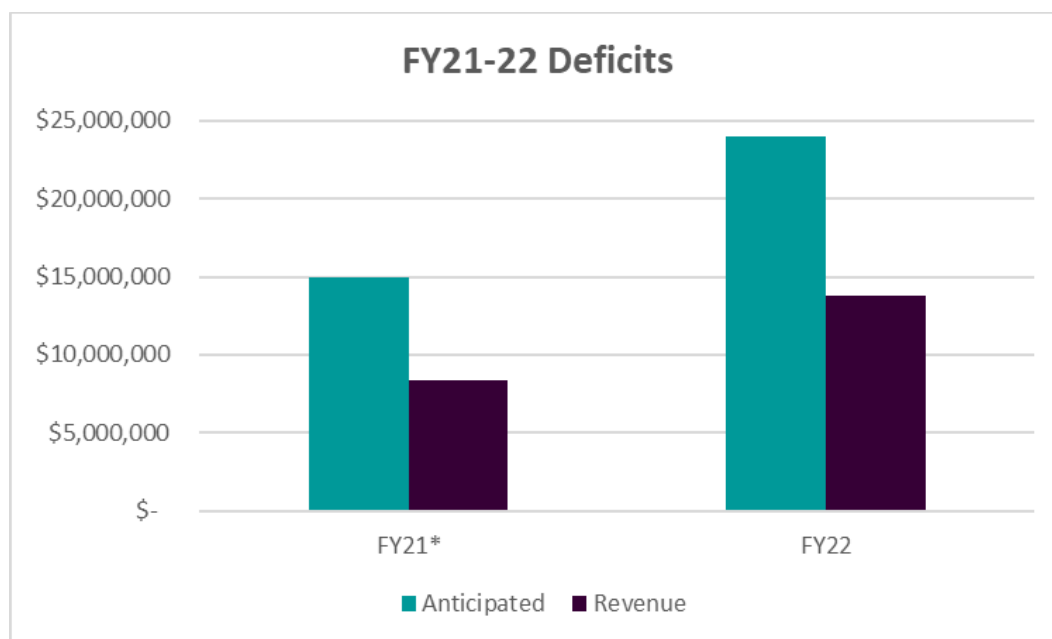


Appropriations

Appropriations	Authority	Appropriation
Local Health Departments - enforcement	UCA 59-14-807 (3)(a)	\$2,000,000
DHHS - statewide cessation programs	UCA 59-14-807 (3)(b)	\$2,000,000
Public Safety - law enforcement	UCA 59-14-807 (3)(c)	\$1,180,000
Local Health Departments - grants	UCA 59-14-807 (3)(d)	\$3,000,000
State Board of Education - positive behavior plans & grade 4/5 prevention program	UCA 59-14-807 (3)(e)	\$5,084,200
DHHS - drug prevention	UCA 59-14-807 (3)(f)	\$2,000,000
Total		\$15,264,200

Previous Deficit

Anticipated revenue for this fund account was \$15.0 million in FY21 and \$24.0 million in FY22. In FY21, the actual revenue was **\$7,431,350**. Because of this reduction, agencies with appropriated funds prioritized activities, paused work where possible, or did not receive funding. The legislature appropriated a one-time increase of [\\$950,900](#) in FY21 from the General Fund Restricted - Tobacco Control Restricted Account due to the shortfall in the fund. The ending balance of the fund was **\$1,863,724** due to underspending and to ensure a balance was in place for FY 22 Q1 when Utah Code required LHD's to distribute grants.



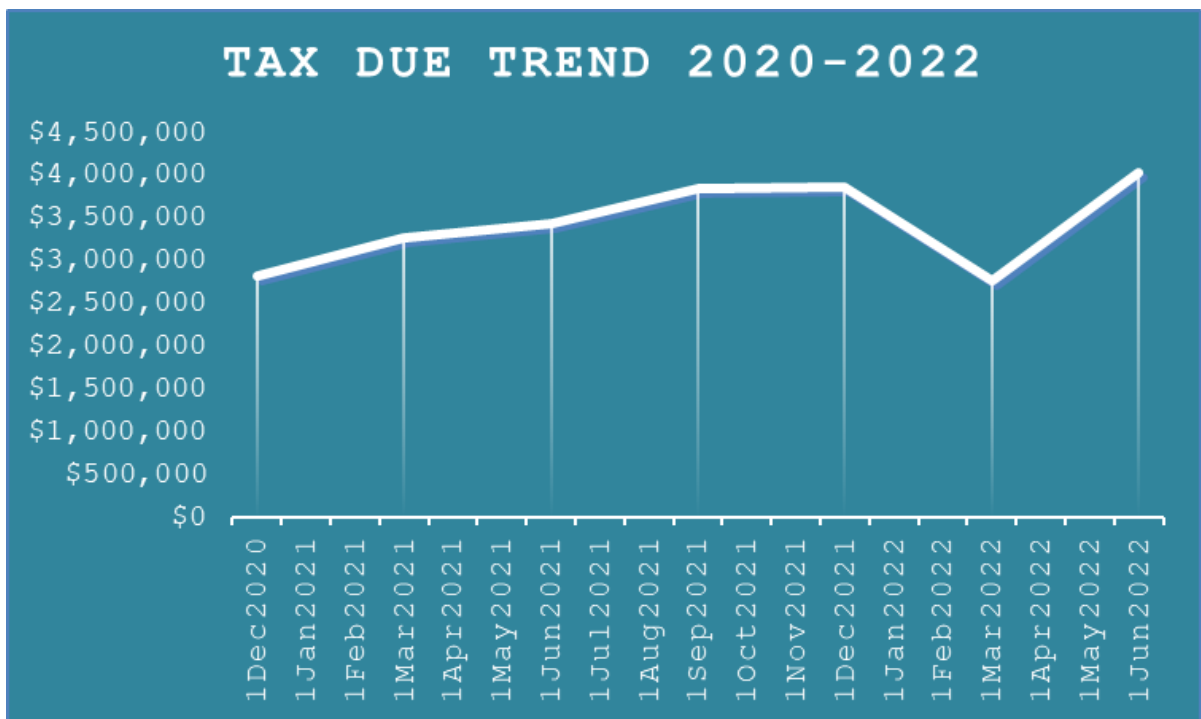
*Includes one-time funding from legislature to offset \$950,900 in projected deficit to the fund in FY 22 Q1

Current Outlook

Overall, revenue is trending in the right direction, yet revenues have not yet reached projected appropriation levels.

Filing Date	Tax Due			Total
	E-Cigarette Products	Nontherapeutic Nicotine Products	Alternative Nicotine Products	
30Sep2020	\$1,592,283			\$1,592,283
31Dec2020	\$2,820,755			\$2,820,755
31Mar2021	\$3,269,544			\$3,269,544
30Jun2021	\$3,435,235			\$3,435,235
30Sep2021	\$3,335,818	\$3,000	\$512,759	\$3,851,577
31Dec2021	\$2,960,626	\$2,000	\$897,808	\$3,860,435
31Mar2022	\$2,014,798	\$1,000	\$750,723	\$2,766,521
30Jun2022	\$3,011,801	\$1,000	\$1,010,028	\$4,022,829
Total	\$22,440,860	\$7,000	\$3,171,318	\$25,619,179

Source: Utah State Tax Commission



Source: Utah State Tax Commission

In FY22, the revenue collected was **\$13,825,703** leading to a deficit of approximately **\$-1,440,000**. Final revenue numbers are expected within the coming weeks but are not expected to change

significantly. Due to underspending in this fund, the FY22 revenue will cover FY22 expenditures.

FY	Electronic Cigarette Substance and Nicotine Product Tax Restricted Account Revenues
2021	\$7,431,350
2022	\$13,825,703

*FY2022 Revenues are preliminary

Source: Utah State Tax Commission

Considerations

- The Utah State Tax Commission reports that previous deficits are partly attributed to a lack of manufacturer's knowledge about a new tax. It appears that this "learning curve" is resolving.
- Decreased tax collections in the first quarter of 2021 may be due to a build up of inventory over the holidays which potentially decreased manufacturers and retailers purchases of additional e-cigarette products in the first quarter.
- Revenues for calendar year quarter 2 of 2022, which will fall into FY23 revenues, shows the strongest single quarter collection thus far in this fund **\$4,022,829**.
- Due to FY21 and FY22 underspending, the fund will cover FY22 appropriations.

Potential Solutions

Items the departments and committees plan to continue doing:

- The Utah State Tax Commission will continue to work on manufacturer compliance through education.
- The Department of Health and Human Services will continue to have quarterly meetings with the Utah State Tax Commission regarding this account.
- The Youth Electronic Cigarette, Marijuana and Other Drugs Prevention Committee will continue to coordinate with the local health departments, State Board of Education and Public Safety for appropriate use of the restricted funds.

Items that would require legislative action:

- Stabilize the restricted account by making a one-time infusion of funds into the account or covering the currently funded programs with a one-time appropriation from other sources. This one-time funding would reset the timing of disbursements from the restricted account so that current year payouts would be based on prior year collections rather than current year collections. All programs would know at the start of the fiscal year the amount they would have available to spend for that fiscal year.
- Modify UCA 59-14-807 to allow for flexibility of funds if underspending occurs in a year.
 - Develop a mechanism for programs to carry forward a portion of their underspent funds to the next year.

- Reductions in restricted account distributions currently affect all appropriations proportionally. If appropriations were prioritized, certain programs (for example: local health department grants or enforcement) could have more certainty that they would receive consistent funding year over year.