State Tax Laws Governing Tribal Tobacco Sales

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Abstract

Background: Native American tribes are sovereign nations within the United States. As such, their members are exempt from state-level excise taxation, and the tribes themselves have the power to govern on-reservation tobacco sales. This can make collecting taxes owed for tobacco sales to non-Indians difficult for states without formalized relationships/tax agreements.

Objectives: Understand various methods states utilize to administer and enforce taxation of tobacco products on tribal lands.

Methods: Laws were collected for all 50 states plus Washington, D.C. for years 2005-2014. Boolean searches were done in Lexis-Nexis and Westlaw in the following state-level databases: statutes and regulations, case law, Attorney’s General opinions, and Dept. of Revenue notices/rulings. Collection was limited to laws addressing taxation compacts (general or tobacco-specific), as well as tobacco sales by/to tribal entities. Non-codified tribal codes/compacts were excluded. All laws were double-coded by two legal researchers for one year to ensure consistency in the analysis.

Results

Methods: Laws effective as of January 1, 2005 through 2014 were collected for all 50 states plus Washington, D.C. Boolean searches were done in Lexis-Nexis and Westlaw in the following state-level databases: statutes and regulations, case law, Attorney’s General opinions, and Dept. of Revenue notices/rulings. Collection was limited to laws addressing taxation compacts (general or tobacco-specific), as well as tobacco sales by/to tribal entities. Non-codified tribal codes/compacts were excluded. All laws were double-coded by two legal researchers for one year to ensure consistency in the analysis.

This analysis presents preliminary, double-coded data for the 2012 year.

Research Questions

1. How many states address on-reservation tobacco/cigarette sales and taxation within their codified laws?
2. How comprehensive are tribal tobacco sales laws at the state level?
3. What mechanisms do states utilize to regulate tobacco sales and minimize evasion on reservation land?

Implications for State and Community Tobacco Control

Formalizing taxation policies as they relate to non-tax-exempt sales on tribal lands, and the creation and utilization of payment systems or mechanisms, including coupons, compacts, and tax pre-payment (with refund schedule), may assist states in collecting revenue otherwise lost. Additionally, states can reduce or eliminate incentives for tax avoidance and evasion and, as a result, increase the effectiveness of state tobacco taxes in reducing tobacco use and its consequences.

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