

State Approaches to Addressing Cigarette Tax Avoidance and Other Tobacco Product Taxation, 2005-2014

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Abstract

Background: Some states have responded to the annual loss of cigarette tax revenue due to tax avoidance by enacting laws that seek to reduce the incentives for tax avoidance, while also seeking to tax to a greater extent emerging and increasingly popular other tobacco products (OTPs).

Objective: This presentation had two primary objectives: First, to examine states' specific strategies to minimize cigarette tax avoidance through: (1) anti-counterfeit cigarette stamp encryption technology; (2) additional, distinctive stamps, particularly for tribal entities; and (3) penalties for non-compliance. Second, this presentation aimed to assess the changing landscape of state-level OTP taxation.

Methods: Primary legal research of statutory, administrative, case law and relevant state agency rulings using Lexis-Nexis and Westlaw for all 50 states and the District of Columbia for the years 2005 through 2014.

Results: As of 2014, 4 states utilize encrypted cigarette stamps, 10 states use additional distinctive stamps (particularly for tribal entities), and 26 states apply floor stock taxes. Forty-three states suspend, and all states except South Carolina revoke one's license for non-compliance with cigarette tax provisions. Nearly all the states tax most OTPs (48-50 states), except dissolvables (25 states) and e-cigarettes (1 state). OTPs are more likely to be taxed by percentage of cost than weight. From 2005-2014, states most often changed the tax structure and rates of moist snuff, little cigars and roll-your-own tobacco.

Implications: State legislatures and agencies should consider the landscape of tobacco product taxation and how it can lead to substitution to lower/non-taxed OTPs and/or tax avoidance/evasion.

Research Questions

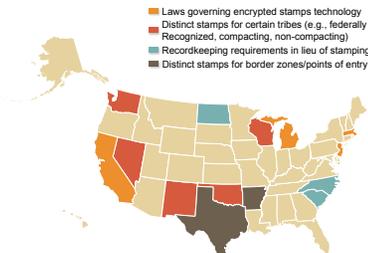
- 1) What laws have states passed to minimize cigarette tax revenue loss due to tax avoidance?
- 2) How have states changed the ways in which they tax OTPs over time?

Methods

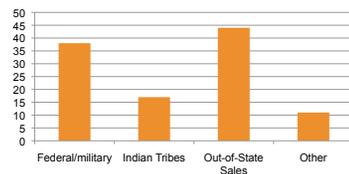
- Primary legal research using Boolean searches of the statutes, regulations, relevant agency opinions and (where appropriate) case law in all fifty states and Washington, D.C. were collected using Lexis-Nexis and Westlaw Next
 - This study focused on laws in effect from Jan. 1, 2005 through Jan. 1, 2014
 - Laws in effect as of 1/1/12 were double-coded by two attorneys to ensure accuracy and usability of coding scheme
 - Cigarette and OTP laws were analyzed using comprehensive coding scheme and corresponding Decision Rules document
 - State law data were validated against secondary sources: CDC STATE, NCI SCLD, Tax Burden on Tobacco
 - Cigarette/OTP Law Inclusion criteria: excise tax and related laws
 - Exclusion criteria: state Constitutions, sales tax laws, enabling laws, online delivery sales laws, MSA laws

Results: Cigarette Tax-Related Items

Cigarette Stamping/Recordkeeping

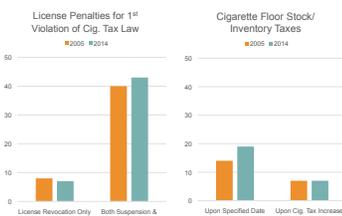


Number of states with cigarette tax exemptions by party (as of 1/1/14)



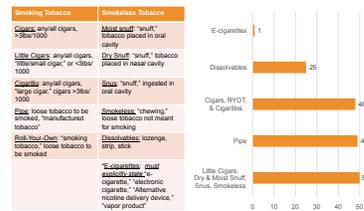
"Other" includes: inmates (CT, KY, MS), cig factory workers (VA), State of Maine Purchasing Dept (ME), where approved by Dept. of Rev. (MT, PA), persons buying cigs w/o nicotine (MA), various non-profits, etc. (AL, NY), purchasers tax-exempt under Internal Revenue Code (CA)

State License Penalties and Floor Stock/Inventory Taxes, 2005 vs. 2014

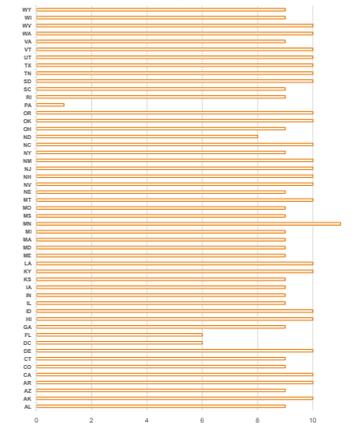


Results: OTP Taxation

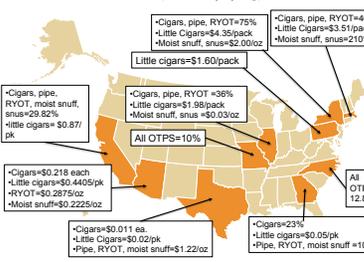
OTP Definitions and Prevalence of State Taxes (as of 1/1/14)



OTPs taxed by state (as of 1/1/14)



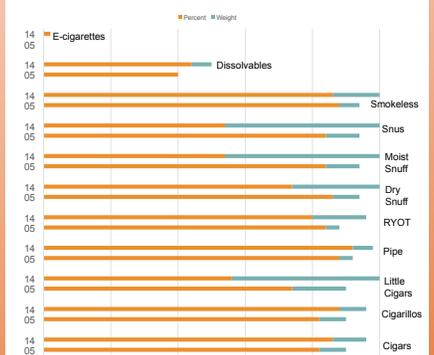
OTP Taxation: SCTC Site/Investigator States (as of 1/1/14)



Base for ad valorem (%age) rates vary by state but include: wholesale [purchase, cost, sales] price, manufacturers' [invoice, list] price, product value, cost price

Results: OTP Taxation Continued

of States that Tax OTPs by %age vs. by Weight, 2005 vs. 2014



Implications for State and Community Tobacco Control

Every year, states suffer cigarette tax revenue loss due to cigarette tax avoidance. To counter this, states should consider enacting anti-counterfeit stamping technology, floor stock taxes and steeper penalties (with rigorous enforcement) to deter tax avoidance.

State legislatures and agencies should be aware that consumers in states with high cigarette taxes may instead substitute to lower-cost OTPs such as little cigars, roll-your-own tobacco, or e-cigarettes. States should therefore consider taxing these OTPs at higher rates.

Acknowledgments

Funding provided by the National Cancer Institute under the State and Community Tobacco Control Initiative, grant number 5U01CA154248, University of Illinois (PI: Frank J. Chaloupka, PhD). We would like to thank Ryan Patrick, JD at The MayaTech Corporation for assistance with compiling the OTP tax rates.

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