50-State Law Approaches to Reducing Cigarette Tax Avoidance and Taxing OTP’s, 2005-2014

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Presentation Overview

• Research questions
• Background to motivate the research
• Study methods
• Findings from the study
• Implications for state and community tobacco control
Research Questions

1) **CIGARETTES**: How have states minimized tax avoidance through:
   - (1) encrypted cig stamps
   - (2) distinctive tribal stamps
   - (3) border tax rates

2) **OTPs**: What tax rates and federal law changes have occurred between 2005-2014?
BACKGROUND
Research Problem

Tax Avoidance and Evasion (Cigarettes):
1) causes states to lose money every year
2) undermines public health objective of deterrence through higher taxes.¹

Taxation not keeping pace with consumption (OTPs):
1) Most OTPs are taxed at far lower rates than cigarettes
2) OTP consumption steadily risen, while cigarette smoking rates declining.²


Curtailing Tax Evasion through Encrypted Cigarette Stamps

- Stamps are main enforcement mechanism in 48/51 states

- How encrypted stamps help stop tax avoidance
  - Multiple layers of authentification (i.e. not counterfeit) and verification (i.e. where came from)
  - Allow state enforcement to immediately identify counterfeit stamps
New Federal Laws: Lower taxes on Pipe + Large Cigars

2009 Tobacco Control Act

2010 PACT Act

2014 FDA “Deeming Rule”

FEDERAL TAX RATES:
- Little/small Cigars taxed the same as cigarettes
- Chewing Tobacco < Snuff
- Pipe < RYOT

Closed tax loophole on online, mail-order sales:
- All taxes must be paid
- Reporting, delivery requirements on sellers of cigs, (RYOT), smokeless (snus, snuff)

E-cigarettes
- Could regulate ingredients, age restrictions, etc. same as cigs
Percentages of Change in Cigarette, OTP Consumption, 2008-2011

Loose Tobacco vs. Pipe Tobacco, 2010-2013

Smoking Tobacco Sales
Total US Market-Combined Convenience and FDM Stores (Nielsen)

SOURCE: Jidong Huang, Frank Chaloupka. “Prices and Sales of Tobacco Products from Commercial Scanner Data: 2010-2013
Disposable E-cigarette Sales, 2010-2013

Disposable Electronic Cigarettes
Volume and Price (US Market) Nielsen

SOURCE: Jidong Huang, Frank Chaloupka. "Prices and Sales of Tobacco Products from Commercial Scanner Data: 2010-2013"
METHODS
Methods

• Original legal research (Lexis + Westlaw Next)
• Boolean searches of the statutes, regulations, relevant agency opinions and (where appropriate) case law
• All 50 states and Washington, D.C.
• All laws double-coded one year to refine coding protocol
• Inclusion criteria (cigs): explicitly states ‘encrypted,’ ‘digital’ stamps
• Inclusion criteria (OTPs): definitions
• Exclusion criteria: state Constitutions, sales tax laws, enabling laws, online delivery sales laws, MSA laws
• Secondary source verifications: CDC STATE System, NCI SCLD System, CTFK, NCSL, published articles, state department of revenue/taxation websites, etc.
Methods: Types of OTPs

- Cigars
- Cigarillos
- Little cigars
- Pipe
- RYOT
- Dry snuff
- Moist snuff
- Snus
- Smokeless
- Dissolvables
- E-cigarettes
RESULTS
Cigarette Stamping/Recordkeeping Results
Cigarette Stamping/Recordkeeping Laws (as of 1/1/14)

- Encrypted stamps w/ anti-counterfeit technology
- Distinct stamps for certain tribes (e.g., federally Recognized, compacting, non-compacting)
- Recordkeeping requirements in lieu of stamping
- Distinct stamps (TX) or rates (AR) for border zones
Encrypted Stamp Laws

• **California**
  • GOAL—stop estimated $280 billion annual losses)
  • Law 1st eff. Jan. 1, 2005 (30162)

• **Massachusetts**
  • GOAL—stop/slow counterfeit stamps, easier authentication process, only MSA-approved cigs stamped
  • Law 1st eff. July 1, 2011 (64C, 30)

• **Michigan**
  • GOAL—fight tax evasion
  • Law 1st eff. June 20, 2012 (205.425a)

• **New Jersey**
  • Law 1st eff. Oct. 31, 2008 (54:40A-11)
  • NOT implemented