

An Oklahoma History of Cigarette Taxation

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Abstract

Taxation has long been accepted as a primary policy tool for reducing tobacco use and smoking rates. The *Tax Burden on Tobacco*, originally published by the Tobacco Institute and now by Orzechowski & Walker Consulting, is the primary source researchers use for data on tobacco tax rates in the United States. For work on the demand response to variations in tax rates in tribal jurisdictions, no such “go-to” history of tax rates has been available. Because of its pre-statehood history as the Indian Territory of the United States, a large fraction of total tobacco sales in Oklahoma are tribal sales. Focusing on cigarettes, this paper lays out the history of tobacco taxation in Oklahoma. For nontribal sales, this includes checking, extending, and providing background detail for Orzechowski and Walker’s work. For tribal sales, this includes historical discussion and an extensive tabulation of the tax rates that different Oklahoma-based tribal nations have paid to the state. For the taxation of tobacco products by tribes themselves, details remain sketchy but information that we do have indicates that these rates tend to be low. With a market share for tribal cigarette sales peaking at over 45%, tribal taxation is an important issue in Oklahoma. Despite lower market shares, it is doubtless an important issue for various other of the 50 states, especially in the West. We leave any extension of this work to other tobacco products for future research.

Keywords: Cigarette tax history, Indian Reservation, tribal compacts, Native American, Oklahoma

Introduction

Taxation has been accepted for many years as a primary policy tool for reducing smoking rates (Chaloupka et al., 2012). A fundamental concern in tobacco taxation policy, however, is the potential for smuggling and interjurisdictional shopping behavior that will diminish the impact of a given tax (Stehr, 2005). Tribally regulated or “reservation sales” of tobacco are a prime source for interjurisdictional sales that reduce the impact of tobacco taxation.

Before statehood, much of Oklahoma was designated as Indian Territory. Indeed, the state was formed as a combination of the Oklahoma Territory, mostly western portions of the state, and the Indian Territory, mostly on the eastern side.¹ Because of this, Oklahoma has always had a strong Native American presence and, as of 2012 U.S. Census data, 9% of the Oklahoma population reported their race as Native American or reported citizenship in an Oklahoma tribe (US Census Bureau, 2014). Unlike most of the rest of the United States, Oklahoma does not have “Indian reservations” and tribal populations, as well as tribal smoke shops, are integrated with nontribal populations.² In FY 2007, peaking at over 45% market share for total cigarette sales in the state, tribally regulated cigarette sales are a big issue in the state.³

The purpose of this paper is to document the history of cigarette taxation in Oklahoma. This includes nontribal as well as tribally regulated sales. In the

spirit of the Orzechowski and Walker (2012, hereafter “the *Tax Burden*”), our primary objective is to provide these data as a resource for researchers on cigarette taxation. Beyond this, we intend to provide a documentation trail, illustrating how these data can be collected for other states, and some historical context for changes in Oklahoma cigarette taxation.

This article begins with a brief historical review of federal cigarette taxation. It then reviews the history of Oklahoma state taxation of cigarettes with notes on the historical background of changes. It then covers the waves of compact negotiation for state taxation of tribal sales and concludes with brief commentary on the complexity (and lack of good information) on cigarette taxation at the tribal level.

The federal taxation of cigarette sales in the United States

To cover the history of cigarette taxation at the federal level, which is outside the focus of our research, we simply refer readers to the details of this history as presented in the *Tax Burden*, here summarized as Table 1.⁴

¹ See Everett (2015) and Wynn (2004). The enabling act for Oklahoma statehood (US HR 12707) was signed by President Roosevelt on June 16th, 1906, and Oklahoma became a state on November 16, 1907.

² The Osage Nation in Oklahoma is considered to have a reservation, but this reservation status applies to the mineral rights of the land in Osage jurisdiction which, given the oil resources there, has been an important issue. The handling of surface land rights within the Osage jurisdictional area is similar to the rest of the state.

³ Taken from archival data in Oklahoma Tax Commission (2014).

⁴ Not covered in the *Tax Burden*, the first U.S. tobacco tax was a temporary measure that raised revenue to help pay off the national debt from the Revolutionary War. It was enacted in 1794 as an excise tax raised on manufactured snuff, which was repealed in 1802. (See National Commission on Marihuana (sic) and Drug Abuse, 1972).

Table 1: Dates of Changes to Federal Excise Tax on Cigarettes

Date of increase	Dollars per pack of 20	Date of increase	Dollars per pack of 20
6/1/1864	0.024	2/25/1919	0.06
1865-1868	Rates varied	7/1/1940	0.065
7/20/1868	0.03	11/1/1942	0.07
3/3/1875	0.035	11/1/1951	0.08
3/3/1883	0.01	1/1/1983	0.16
8/15/1897	0.02	1/1/1991	0.2
6/14/1898	0.03	1/1/1993	0.24
7/1/1901	0.0216	1/1/2000	0.34
7/1/1910	0.025	1/1/2002	0.39
10/4/1917	0.041	4/1/2009	1.01

Source: *Tax Burden on Tobacco, Historical Compilation, Vol 47, 2012.*

Clearly, all states were and are subject to these federal excise taxes. Tribes are also generally considered to be liable for federal excise taxes on cigarettes, even for cigarettes produced on the reservation.⁵

⁵ The Onondaga Nation, in upstate New York, has been rejecting the legitimacy of federal claims that tribal cigarette manufacturing must be federally licensed and is subject to federal excise taxation (O'Brien, 2014). In Oklahoma, such disputes have not been an issue.

History of state taxation of cigarettes in Oklahoma

Affiliated with the Women's Christian Temperance Union and the alcohol prohibition movement, a strong anti-tobacco movement was active at the beginning of the 20th century. Indeed, between 1895 and 1921, 14 states including the Oklahoma Territory and then, after its 1907 induction to statehood, the State of Oklahoma, banned the sale of cigarettes. All of these prohibitions had been repealed by 1927 (Neuberger, 1963: 52). During the time of this prohibitionist movement, state youth access restrictions for tobacco were enacted, ultimately extending to all 50 states.⁶ The Oklahoma prohibition of cigarettes seems always to have been somewhat unevenly enforced and to have effectively ended with the passage of a statute that required cigarette sellers be licensed and prohibiting the sale of cigarettes to minors (1917 HB 3).^{7,8}

The first Oklahoma excise tax for cigarettes was signed into law on the 17th of April 1933 (HB 229). It was also in 1933 when the state passed its first general (*ad valorem*) sales tax (1933 HB 619). Both of these bills coincided with a voter initiative that amended the Oklahoma Constitution to ban state-level property taxes and both were intended to compensate for the resulting loss in state revenue. The cigarette tax was set at 3 cents per pack of 20 and was to be implemented via requiring cigarette distributors to purchase tax stamps.

Public opposition to these new taxes, being imposed during a time when the state was staggered by not just

⁶ See National Commission on Marihuana (sic) and Drug Abuse (1972).

⁷ Oklahoma legislation is cited with the year of passage, HB meaning House Bill and SB meaning Senate Bill, and the number of the bill. Ballet initiatives are abbreviated with year, SQ (for State Question), and then the ballot initiative number. The text of these laws is available in *The Oklahoma Session Laws*, various years.

⁸ Givel and Spivak (2013: 11).

the Great Depression but also the Dust Bowl, led to petition drives that ended with the passage of a state constitutional amendment capping sales taxes at 1.5% (1933 SQ 185)⁹ and a separate veto resolution (1933 SQ 179) repealing the cigarette tax. Thus, on August 15, 1933, less than 4 months after Oklahoma's first cigarette excise tax was signed by the governor, and before implementation, Oklahoma voters overturned and rescinded this tax.¹⁰ This first Oklahoma cigarette tax, although never implemented, did have a lasting impact in that it included a provision that tobacco products sold with a tax stamp would be exempt from *ad valorem* sales taxes. When a cigarette excise tax finally did go into effect, in 1935, this exemption was retained and was not repealed until April 21, 1984.¹¹ This exemption from *ad valorem* taxes was then re-established on January 1, 2005. Of those states that have general (*ad valorem*) sales taxes, Oklahoma is the only one that fully exempts tobacco products from these taxes.¹²

The new temporary excise tax for cigarettes, also at the rate of 3 cents per pack of 20 and with proceeds designated for general revenues,¹³ was passed in the 1935 session of the Oklahoma legislator (1935 HB 361, "Cigarette Stamp Tax.") This tax was effective from 20 March 1935 through 13 June 1936.¹⁴ Thus, to correct the *Tax Burden*, it's technically correct to say

that Oklahoma excise taxation of cigarettes began in 1935, (not in 1933, as cited in the *Tax Burden*).

A subsequent temporary excise tax, also at a rate of 3 cents per pack of 20 and with proceeds also allocated to general revenues, was enacted on May 1, 1937.¹⁵ This tax was renewed, before its expiration, in 1939.¹⁶ The 1939 tax had no fixed expiry date and its passage marked a transition in Oklahoma from the passage of temporary taxes, advocated as stop-gap responses for budget shortfalls, to the normalization of permanent cigarette taxes. On May 15, 1941, this excise tax rate was then increased to 5 cents for a pack of 20 (to be allocated to general revenues), where it remained until July 1, 1961, when it was increased to 7 cents per pack of 20.¹⁷ In 1965, the rate was again increased to 8 cents per pack, followed by increases to 13 cents per pack in 1968, 18 cents per pack in 1979 and 23 cents per pack in 1987.¹⁸ Oklahoma's excise rate on cigarettes stayed at 23 cents per pack until January 1, 2005 when, via 2004 ballot initiative, its rate was increased to \$1.03 per pack.¹⁹ Table 2 summarizes this history of state cigarette tax changes.

Apart from the aforementioned complexities over how Oklahoma excise taxation began in 1935 instead of 1933, the only other discrepancy we find with data presented in the *Tax Burden* is that we show Oklahoma's move from a 7-cent to 8-cent rate as occurring on June 1, 1965, one month before the date given in the *Tax Burden*. Figure 1 displays the information from Table 2 graphically.

⁹ 1933 HB 619 had established a rate of 2%.

¹⁰ Opposition to the cigarette tax was led by the Oklahoma Retail Druggists Association, which may in turn have been receiving support for the tobacco industry. Because of a waiting period and the political impracticalities of implementing a tax that looked reasonably likely to be vetoed within one month of implementation, the 1933 tax never went into effect. See *Oklahoman* stories "It takes 'yes' votes to beat cigaret's (sic) tax." and "Vote leaves school fate in doubt."

¹¹ 1984 HB 1325, emerg. eff. April 21, 1984.

¹² As of the year 2013, AK, DE, MT, NH, and OR do not have *ad valorem* sales taxes. AL, GA, and MO have rules that avoid double taxation by exempting an amount equal to the state's excise tax from the *ad valorem* tax applied to cigarettes (Boonn, 2014).

¹³ The rate was \$1.50 per 1000 cigarettes, proportional to pack size, thus yielding a tax of 1.5 cents per pack of 10 and 3 cents per pack of 20. Section 4 of HB 361.

¹⁴ There was also 1935 HB 45, "Cigarette Stamp Act," Passed 5 Feb 1935, effective from 7 March 1935 through June 13, 1936. HB 45 was repealed March 20, 1935, by HB 361.

¹⁵ 1937 HB 236, approved May 1, 1937.

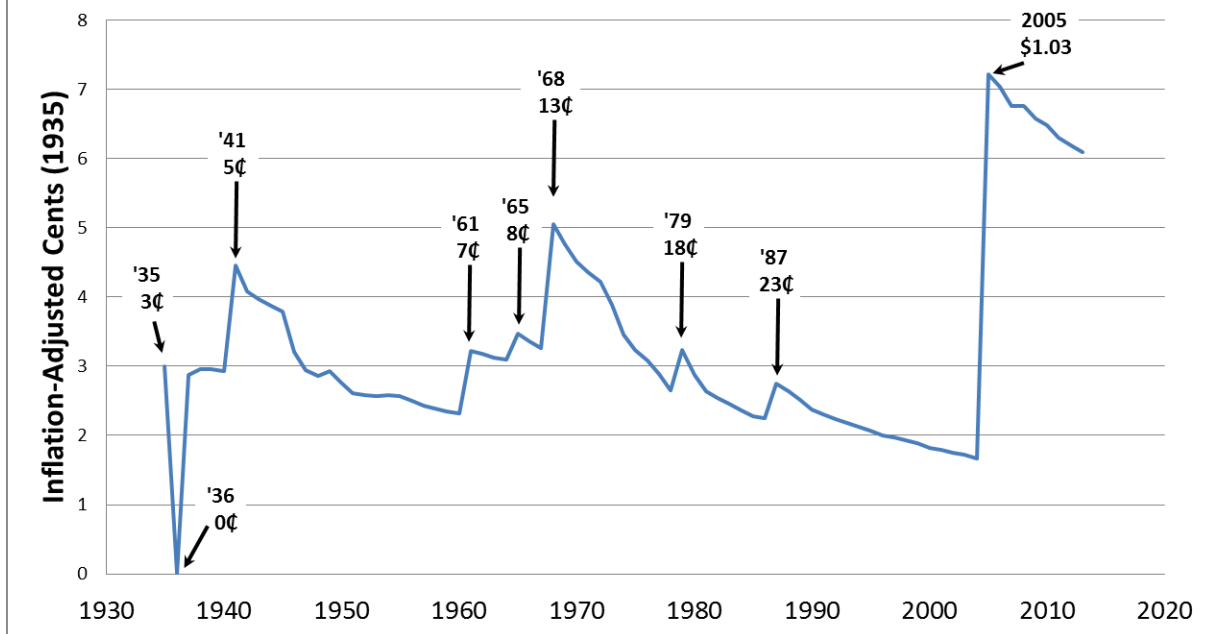
¹⁶ 1939 HB 234, approved March 27, 1939. This law specified a tax rate of 1.5 cents for a pack of 10, 3 cents for packs of 11 to 20, and 1.5 additional cents for each additional 10 cigarettes or major fraction thereof. This arrangement of discrete levels for tax rates, which is necessary for the application of a small number of tax stamp denominations, has continued to the present day.

¹⁷ 1941 HB 491. The 1961 change was via 1961 HB 800.

¹⁸ 1965 HB 511 (with proceeds designated for general revenues), 1968 HB 1032 (with proceeds designated for payment of building bonds), 1979 HB 1484 (with the increase designated for general revenues), 1987 HB 1061 (with increase designated for general revenues).

¹⁹ 2004 SQ 713.

Figure 1: Oklahoma Excise Tax on Cigarettes*
Inflation-Adjusted, 1935 Cents/Pack of 20



*An *ad valorem* sales tax was in force from 4/21/1984 through 12/31/2004. During this time the state sales tax rate varied from 3% to 4.5%. When including local sales taxes, the average cross-state per-pack cost of these *ad valorem* taxes in 2004 was estimated to be 25 cents (Givel and Spivak, p. 63).

Table 2: Dates of Changes to the Oklahoma State Excise Tax on Cigarettes*

Date of increase	Cents per pack of 20	CPI	Inflation-adj cents per pack
3/20/1935	3	13.8	3.0
6/13/1936	0	14.0	0
5/1/1937	3	14.4	2.9
5/15/1941	5	15.5	4.5
7/1/1961	7	30.0	3.2
6/1/1965	8	31.8	3.5
4/1/1968	13	35.5	5.1
7/1/1979	18	76.7	3.2
6/1/1987	23	115.4	2.8
1/1/2005	103	196.8	7.2

*Historical CPI data comes from the CPI-U series, U.S. city average, all items, 1982-84=100, U.S. Bureau of Labor Statistics, 2014

Notes on the historical contexts of state cigarette taxation in Oklahoma

From the 1930s through the 1980s, simple revenue generation seems to have been the prime motivation for Oklahoma cigarette taxation. During the 1930s the aforementioned negative image of tobacco, remaining from the prohibition era, seems to have contributed to making cigarettes a particularly attractive target for taxation. Nevertheless, via a search of digital archives for the leading newspaper of the state (the *Oklahoman*) we found no articles or editorials mentioning sin-tax motives for cigarette taxation during the 1930s. Nor did we see references to public health. Using search terms ‘cig’ and ‘tax’ we found numerous news bits simply reporting legislative details, one mention that the governor had

referred to the 1933 proposal as a “luxury tax” (“Senate power...,” *Oklahoman*, 1933) one commentary that “Masses must pay costs in final showing” (“Masses...,” *Oklahoman*, 1935) and one report of commentary that cigarette taxes are regressive (“Legislator...,” *Oklahoman*, 1935).²⁰

The wave of anti-tobacco sentiment that followed release of the 1964 Surgeon General’s report on smoking and health would, presumably, have increased public acceptance of tobacco taxation.²¹ Consistent with this, Oklahoma cigarette taxes increased dramatically in the 1960s, as did state cigarette excise rates across the country. Still, the logic of using taxation as an instrument to reduce smoking does not seem to have taken hold until the 1990s.

Organized Oklahoma activity to promote tobacco control that began in the 1990s, with the Oklahoma Alliance on Health or Tobacco, is chronicled in Givel and Spivak (2013: 11-54). These efforts yielded some success in curbing Oklahoma’s relatively pro-tobacco smoke-free air laws (for example, reversing a 1987 law that required Oklahoma restaurants to accommodate smokers)²² but, aside from Oklahoma’s participation in the Master Settlement Agreement (which can be thought of as a tax), did not focus on taxation until the 2000s. The details of this history are covered by Givel and Spivak.

A key obstacle to the use of taxation as an instrument of tobacco control in Oklahoma was created by the 1992 SQ 640. This ballot initiative amended the state

constitution so as to require any measure increasing taxation either to be passed by direct ballot initiative or to obtain a three-fourths majority in both houses of the Oklahoma legislator.

The big success for Oklahoma tobacco taxation policy came with the passage of 2004 SQ 713, an initiative put on the ballot by the state legislator through 2004 HB 2660.²³ While eliminating the state’s ad valorem sales tax for tobacco products, this law increased the state excise tax on cigarettes by 80 cents per pack. On average, with some variation depending on local sales tax rates, which were pre-empted by the new tax, this resulted in a net 55-cent increase in the tax per pack of cigarettes sold by nontribal retailers in Oklahoma.²⁴ This increase took Oklahoma from a rank of 9th lowest excise tax rate for cigarettes, among the 50 states, in 2004, to a rank of 15th highest.

Figure 2 compares the inflation-adjusted Oklahoma excise tax rate for cigarettes to the federal and state-average excise rates. Here we see that, although at first a leader in cigarette taxation, Oklahoma rates were close to average throughout the 1970s and 1980s. Then, as the tobacco control movement became better organized and other states began to use taxation as an instrument to promote public health, Oklahoma fell behind in the 1990s. This was corrected with the large Oklahoma excise tax increase of 2005, which brings us to the present era, where, as

²⁰ The editors of the state-wide *Oklahoman* newspaper may have been pro-tobacco and thus reporting in the *Oklahoman* may not reflect general feelings within the state.

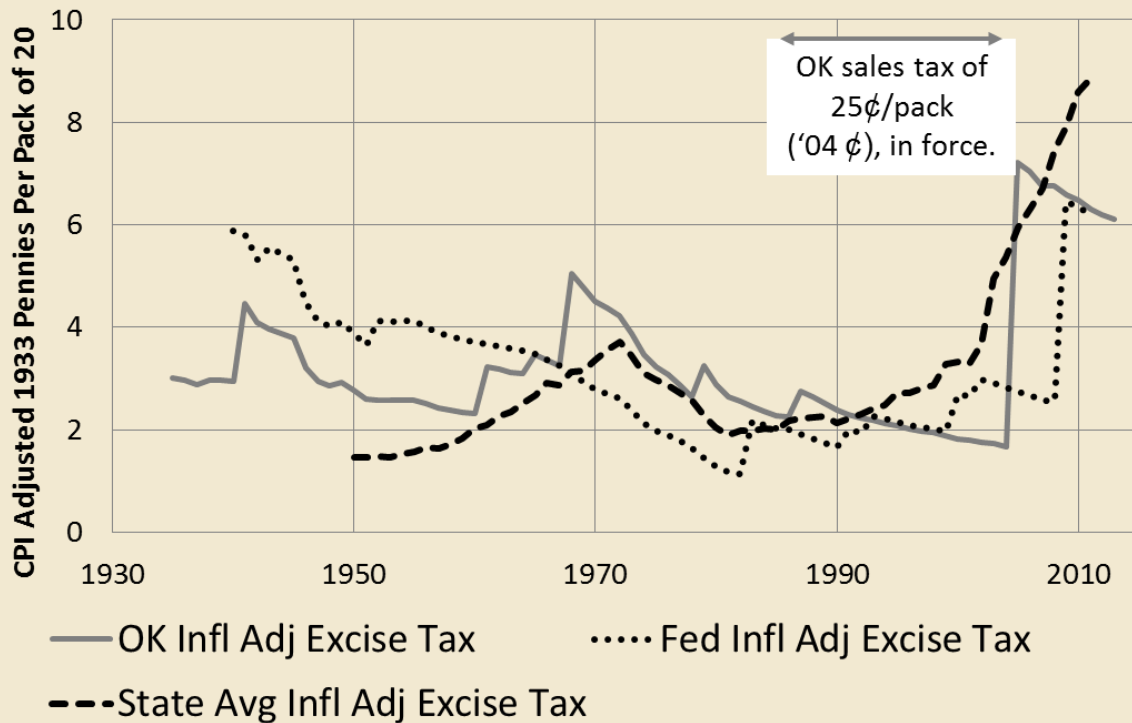
²¹ The *Oklahoman* did, however, continue to have a seemingly pro-tobacco stance. An archive search on ‘cig’, ‘tax’, and ‘health’ for the decade of the 1960’s yielded three hits. The first (1960) was a news story noting that a proposed tax increase would provide insufficient funding for its promised use. The second (1967) was an editorial disparaging the public health push against smoking. The third (1968) was a somewhat sardonic editorial that pondered what the proceeds of Oklahoma’s 1968 tax increase would be used for.

²² Givel and Spivak, p. 11.

²³ To put a voter initiative on the ballot, the Oklahoma Governor needs only support from a simple majority in both houses. The full language of the complex tax changes provided by 2004 SQ 713 is provided in 2004 HB 2660.

²⁴ This history is detailed in Chapter 5 of Givel and Spivak.

**Figure 2: Inflation Adjusted Excise Cigarette Taxes
Federal, State Avg, and OK, in 1933 Pennies per Pack**



California and many northern states continue to increase their taxation rates, Oklahoma has fallen below average. A fundamental complexity of cigarette taxation in Oklahoma, a complexity not factored into listed state tax rates, is the importance of lower-taxed tribal sales in the state. This will be discussed in the next section.

Taxation of tribal cigarette sales

Federal taxation

Tribes are generally considered to be liable for federal excise taxes, even for cigarettes produced on reservation land. Although the Onondaga Nation in upstate New York has been rejecting the legitimacy of federal claims that tribal cigarette manufacturing must be federally licensed and is subject to federal

excise taxation (O'Brien, 2014), no Oklahoma tribes have rejected federal authority to tax cigarette sales in their jurisdictions.²⁵

State taxation of tribal sales

Across the United States, the authority of state governments to tax tribal tobacco sales, when those sales are made to nonmembers of a tribe, was established by U.S. Supreme Court precedent in the *Moe v. Salish & Kootenai Tribes* case, 425 US 463

²⁵ For example, in a 2014 federal court settlement between the Seneca-Cayuga Tribe of Oklahoma and U.S. Department of Justice, since the Seneca-Cayuga had paid federal taxes on the confiscated cigarettes, they were due refunds for federal taxes paid on confiscated cigarettes. The tribe simply disputed paying state taxes on cigarettes manufactured by the tribe and did not dispute paying federal taxes (Craig, 2014).

(1976). This included an obligation that tribes exert minimal practical efforts necessary to support effective state tax collection for sales to nonmembers by means such as purchase of tax-paid stamps, as is done in Oklahoma. This authority of the states was then upheld in the 447 U.S. 134 (1980) case, where the Confederated Tribes of the Colville Indian Reservation challenged that the imposition of state taxes would severely harm their retail businesses. Implicit in the timing of these court decisions is that the sale of cigarettes in tribal jurisdictions, as a way for nonmembers to avoid taxation, was not a big concern before the 1970s.²⁶

On the legislative front, nationwide concern about the loss of state revenue to tribal sales led ex-Oklahoma governor and U.S. Senator Henry Bellmon to introducing U.S. Senate Bill 715 (1978) “to permit state and local governments to collect state and local taxes on alcoholic beverages and tobacco products sold or consumed on military and other Federal reservations.”²⁷ Perhaps because it would have been redundant to the above case law, this legislation died in committee.

An archive search of the *Oklahoman* for the 1970s shows no controversies over state taxation of tobacco sales at tribal locations except for one case during the summer of 1979. This involved a non-Osage entrepreneur who, from a rented location on trust land of the Osage Nation, actively marketed to nontribal customers and had his cigarette inventory confiscated by the state.²⁸ Newspaper archives show that concern over state-tax-free tribal sales began to pick up in the 1980s. A 1983 news story covers conversations with the general counsel of the

Oklahoma Tax Commission asking Oklahoma’s Attorney General to consider clarifying opinions that the state may have jurisdiction to tax tribal tobacco sales.²⁹ A 1984 story then covers tribal efforts to unify in their fight against increased state encroachment on tribal tobacco retailing.³⁰ It then seems that the *California v. Chemehuevi Indian Tribe* SCOTUS decision (474 US 9, 1985), affirming that states can tax tribal tobacco sales, ushered in an era of coordinated, state-wide efforts to enforce rules for the taxation of tobacco products.³¹

Tribal efforts to push back against state taxation, including participation from the Bureau of Indian Affairs and the U.S. Attorney’s office in Oklahoma City,³² culminated in a federal injunction against the state’s efforts to collect taxes from the Citizen Potawatomi Nation.³³ Via district court (which ruled the state could tax tribal sales to nonmembers) in May of 1988,³⁴ overturned in the 10th circuit court in January of 1990 (ruling that the state could not tax sales made in tribal jurisdictions),³⁵ and finally decided by the U.S. Supreme Court on February 26, 1991, this became the landmark *Citizen Potawatomi Case*.³⁶ It established that the authority of state governments to tax tribal tobacco sales to nonmembers of a tribe was applicable in Oklahoma, even despite the unique history of the state.

While the *Moe*, *Colville*, and *Potawatomi* decisions all affirmed that states could tax tobacco sales made in tribal jurisdictions to nonmembers of the tribe of that jurisdiction, they limited state enforcement to activities off of tribal lands, such as confiscation of

²⁶ A history of the Colville case says that tribes in Washington state did not begin selling unstamped cigarettes until the 1970s (Committee on Tax Evasion, 1978).

²⁷ The bill was introduced to the Senate on 3/21/1979 but never cleared the Senate Finance Committee. See Library of Congress, <https://www.congress.gov/bill/96th-congress/senate-bill/715/>, visited on 6/6/15.

²⁸ “Court Loser Hikes Price,” *Oklahoman*, 1979, p. 12.

²⁹ “State asks to apply sales tax rule in Indian lands,” *Oklahoman*, 1983.

³⁰ “Indians Promise State Fight Over Effort to End Benefits,” *Oklahoman*, 1984.

³¹ “Cigarette Tax Enforcement Gaining Priority in State,” *Oklahoman*, 1985.

³² Trammel (1987).

³³ Robinson (1987).

³⁴ “Tribe Fights Tax Ruling,” *Oklahoman*, 1988.

³⁵ “Decision Bars State Tax Commission From Taxing Indian Cigarette Sales,” *Oklahoman*, 1990, p 15.

³⁶ *Oklahoma Tax Commission v. Potawatomi Tribe*, 498 US 505 (1991).

cigarette shipments or arresting individuals involved in untaxed tobacco trade. The court recommended that the practicalities of taxation arrangements be negotiated via treaty or compact. Thus, with the resolution of the Potawatomi case, Oklahoma entered into its first round of state-tribe compact negotiations. This began with 1992 SB 759, the enabling legislation that defined terms, established enforcement authorities, and delegated authority to enter into taxation compacts with the tribal nations to the state governor.

Negotiations for a first wave of tribal compacts began with the passing of this bill, in the spring of 1992. Early signers of these compacts included 4 of the 5 state's biggest tribes, signing that summer. These compacts, all nearly identical, established that the state excise rate for tribal sales would be 25% of the applicable nontribal excise rate. While packs sold at nontribal outlets were required to bear a 23-cent state excise tax stamp, tribal shops bore a 5.75-cent stamp. For tribes that did not enter into compacts the cost of the required state excise tax stamp was 75% of the nontribal rate, or 17.25 cents per pack.³⁷ Tribal sales had the additional advantage of being free from state ad valorem tax. A listing of the full history of state excise taxation of tribal tobacco sales in Oklahoma is provided in Table 3.

These first-round compacts were written for a standard 10-year term. In 2002, as these compacts

³⁷ As per 1992 SB 759, tobacco sales from the jurisdictions of tribes that had not agreed with the state on a compact were subject to a state excise rate equal to 75% of the nontribal rate. This tax, implemented via tax stamp, was required for all sales, not just for sales to non-tribal members. The 75% figure was based on an assumption that only 25% of the sales for a typical tribal smoke shop would be made to own-tribe members. Tribes could appeal for a rebate of any excess taxation by presenting documentary evidence to the Oklahoma Tax Commission (with appeal recourse in the courts). This wide gap between the non-compacting tax rate and the compacting rate must have provided substantial inducement for tribal nations to enter compacts. Still, new tribes continued to enter into this first wave of compacts through as late as 2001 (Ottawa Tribe). One reason for these delays was because many small tribes had not yet initiate smoke shops operations until these late dates.

were beginning to expire, the Oklahoma State Department of Health and Oklahoma Tax Commission were preparing for what became the 80-cent per pack increase in cigarette excise taxes (Givel and Spivak, 2013). Thus began a second wave of compacts, negotiated more rapidly than the first round, with nearly all tribes signing by the end of 2004.^{38,39} It was reported at the time that the rapidity of second wave negotiations was partially attributable to negotiators for the state linking compacts over tobacco sales to new gaming compacts made possible by relaxed state laws for tribal casinos.⁴⁰ The template for this second wave of compacts was that, as excise rates increased throughout the state, excise tax rates for both tribal and nontribal retailers would go up equally. Thus, as state excise rates increased by 80 cents, from 23 cents to \$1.03 per pack, the cost of tax stamps for tribal outlets would increase from 5.75 cents to 85.75 cents per pack.⁴¹ To induce tribal acceptance, 50% of new excise tax collections (40 cents per pack) were then to be rebated to each corresponding tribal nation, with a perhaps unenforceable provision that rebated funds would not be used to subsidize tobacco sales.

Outside the standard template, details for this second wave of compacts became complicated. Concessions were made for lower state excise rates at tribal shops near borders with lower-taxed states. Thus some shops, mostly near the Missouri border, were subject to a 5.75-cent "exception" rate, and other shops along the Texas, Arkansas, and Kansas borders were eligible to use 25.75-cent "border rate" stamps. Finally, tribes that refused to enter into compacts

³⁸ "Tobacco hot topic at meeting of tribal leaders," *Shawnee News-Star*, 2002.

³⁹ Perez-Snyder, C. (2002).

⁴⁰ Schafer, S. (2003).

⁴¹ As noted in our discussion of state taxation for nontribal sales, 2004 HB 2660 eliminated state *ad valorem* taxation for nontribal sales (sales taxes that had not been applied to tribal sales). Thus, since the average ad valorem tax was estimated to be 25 cents per pack in 2004, voter approval of this bill served actually to reduce the gap in state taxation between tribal and nontribal sales by approximately 25 cents per pack.

with the state were sold “non-compacting” stamps at a 77.25-cent rate, equal to 75% of the nontribal rate.⁴²

With the passage of 2004 SQ 713, these new tax rates went into effect on January 1, 2005. Shortly after implementation, however, things started to fall apart. This was because many of the tribes and smoke shops subject to higher tax rates began avoiding state taxes by using exception-rate outlets as wholesalers. At its peak, which was for the 2006 fiscal year, 68.6% of all Oklahoma tribal cigarettes were sold with the 5.75-cent tax stamp. During fiscal year 2010, by contrast (after the practice of reselling low-tax cigarettes had been resolved), only 4.3% of tribal sales were made with the 5.75-cent stamp (Laux et al., 2015).

Because of this reselling of exception-rate cigarettes, and coming out of the court battles that went with that controversy, the state and tribal nations negotiated a partial third wave of compacts—compacts that included provisions for enforcement against reselling. The signing of these compacts, often referred to as “state-tribal” compacts because they included provisions for both state and tribal taxation, began in 2008. Regardless of signature date, these compacts were written to terminate on June 30, 2013, they reduced the cost of tax stamps from 85.75 cents to 51.5 cents, and they required that the tribe impose a tribal tax, normally of 15 cents per pack. With the elimination of 40-cent per pack rebates of state taxes to the tribes, these new compacts actually imposed higher net state tax rates on the tribes than the compacts of the second wave. See Table 3 for tribe-by-tribe details on the timing and provisions of this third wave.⁴³

Finally, with the expiration of compacts in 2013 the state and tribes began signing a fourth wave of compacts, often called “unity rate” compacts. The focus of this fourth and last round of compacting has been on harmonizing tax rates across the state. In these, all compacting tribes pay the same \$1.03 rate per stamp that is paid by nontribal retailers. Differential treatment is provided via quarterly tax rebate payments. On signing these compacts, tribes obtain rebates ranging from 50% to 94% on taxes paid, with scheduled reductions in rebate percentages until, by January 1, 2023, all tribes obtain an equal 50% rebate.⁴⁴

A full listing of the history of state taxation of tribal cigarette sales in Oklahoma is provided on Table 3. The listings on the table start with the first tribal compact signed. Most tribes that did not have compacts during the mid to late 1990s either did not yet have tobacco retailing operations or would have had only small-volume sales. For situations where we know a tax rate changed but no record of the applicable compact is available from the Secretary of State, we note that the date of the price change is unknown. Tax changes shaded in grey are agreed schedules for future changes to tax rates (as of January 2015).

⁴² Laux et al. (2015).

⁴³ The 77.25-cent rate (75% of nontribal rate) created by 1992 SB 759 was eliminated by 2009 SB 608, effective January 1, 2010. Via this 2009 bill, the 75% rate was replaced by arrangements whereby non-compacting tribes are given an allowance of state-tax-free “black” stamps. The quota of black stamps is determined by tribal population times average per-capita Oklahoma consumption.

⁴⁴ These rebates are “unrestricted,” meaning that their proceeds can be used to subsidize the lower cigarette pricing.

Table 3: History of Tobacco Compacts in Oklahoma*

Tribe	Changes in State Taxation
Absentee-Shawnee Tribe of Oklahoma	5.75¢ 1/29/93; \$85.75 (w/ 40¢ rebate) 1/14/04; 51.5¢ + 15¢ tribal tax, date unknown, but likely in 2008; 6/30/13 \$1.03 (non-compact rate or no tobacco sales)
Alabama-Quassarte Tribal Town	5.75¢ 5/10/1996; 25.75¢ 1/1/05; 77.25¢ 5/10/06; \$1.03 1/1/10; \$1.03 (w/ 70% rebate) 3/1/14; 60% rebate 1/1/16; 55% rebate 1/1/17; 50% rebate 1/1/18
Apache Tribe of Oklahoma	5.75¢ 5/10/1993; \$85.75 (w/ 40¢ rebate) 1/1/05; \$1.03 (w/ 50% rebate) 7/1/14
Caddo Nation of Oklahoma	5.75¢ 3/2/99; 25.75¢ 1/1/05; no record of post 2005 sales
Cherokee Nation	5.75¢ 1/1/93; 85.75¢ (w/ 40¢ rebate) 1/1/05; 51.5¢ + 15¢ tribal tax 11/3/08; \$1.03 w/ 70% rebate 11/1/13; 65% rebate 1/1/16; 55% rebate 1/1/17; 50% rebate 5/1/18
Cherokee Nation border rate	5.75¢ 1/1/93; 25.75¢ 1/1/05; 2/9/04; tribal tax may be rebated by tribe to border retailers 11/3/08; border rate eliminated for AR border on 3/1/09; border rate eliminated 11/1/13
Cheyenne and Arapaho Tribes	5.75¢ 7/7/98; 25.75¢ 1/1/05; 77.25¢ "no compact" rate 7/7/08; 51.5¢ + 15¢ tribal tax 4/12/10; \$1.03 w/ 50% rebate 7/1/13
Chickasaw Nation	5.75¢ 1/1/93; 85.75¢ (w/ 40¢ rebate) 1/1/05; \$1.03 w/ 70% rebate 11/1/13; 65% rebate 1/1/16; 55% rebate 1/1/17; 50% rebate 5/1/18
Chickasaw Nation border rate	5.75¢ 1/1/93; 25.75¢ 1/1/05; border rate eliminated on 1/1/07
Choctaw Nation of Oklahoma	5.75¢ 1/1/93; 85.75¢ (w/ 40¢ rebate) 1/1/05; \$1.03 w/ 70% rebate 11/1/13; 65% rebate 1/1/16; 55% rebate 1/1/17; 50% rebate 5/1/18
Choctaw Nation border rate	5.75¢ 1/1/93; 25.75¢ 1/1/05; border rate eliminated on 1/1/07
Comanche Nation	5.75¢ 4/9/98; 51.5¢ + 15¢ tribal tax 6/26/08; \$1.03 w/ 70% rebate 11/1/13; 65% rebate 1/1/16; 55% rebate 1/1/17; 50% rebate 5/1/18
Delaware Tribe	5.75¢ 1/1/99; no record of subsequent compacts nor of recent smoke shop operations
Delaware Tribe of Western Oklahoma	5.75¢ 12/19/98; no record of subsequent compacts nor of recent smoke shop operations
Eastern Shawnee Tribe of Oklahoma	5.75¢ 2/26/98, 51.5¢ + 15¢ tribal tax 2/6/09; \$1.03 w/ 94% rebate 10/1/13; 92% rebate 1/1/16; 85% rebate 1/1/17; 80% rebate 1/1/18; 75% rebate 1/1/19; 70% rebate 1/1/20; 65% rebate 1/1/21; 60% rebate 1/1/22; 50% rebate 1/1/23

Tribe	Changes in State Taxation
Iowa Tribe of Oklahoma	5.75¢ 1/4/93; 85.75¢ (w/ 40¢ rest rebate) 1/1/05; \$1.03 (w/ 75% rebate) 10/1/13; 70% rebate 1/1/15; 65% rebate 1/1/16; 50% rebate 1/1/17
Kaw Nation	Date of first sales unknown; 25.75¢ (border rate) 7/24/08; \$1.03 (w/ 75% rebate) 7/1/13; 70% rebate 1/1/15; 65% rebate 1/1/16; 50% rebate 1/1/17
United Keetoowah Band (Cherokee)	5.75¢ 12/16/99; 25.75¢ 1/1/05; 51.5¢ + 15¢ tribal tax 12/16/09; \$1.03 no compact rate 6/30/13 (no current sales)
Kialegee Tribal Town	5.75¢ 5/10/96; 25.75¢ 1/1/05; 77.25¢ (termination of compact) 5/10/06; \$1.03 (w/ black stamps) 1/1/10; \$1.03 (w/ 70% rebate) 2/1/14; 60% rebate 1/1/16; 55% rebate 1/1/17; 50% rebate 1/1/18
Kickapoo Tribe of Oklahoma	5.75¢ 6/10/94; 85.75¢ (w/ 40¢ rebate) 1/10/05; \$1.03 (w/ 75% rebate) 7/1/13; 70% rebate 1/1/15; 65% rebate 1/1/16; 50% rebate 1/1/17
Kiowa Indian Tribe of Oklahoma	Date of first sales unknown; 5.75¢ 12/3/03; 85.75¢ (w/ 40¢ rebate) 1/1/05; termination of compact appears to be effective 6/30/13
Miami Tribe of Oklahoma	Date of first sales unknown; 5.75¢ 5/11/04; \$1.03 w/ 94% rebate 10/1/13; 92% rebate 1/1/16; 85% rebate 1/1/17; 80% rebate 1/1/18; 75% rebate 1/1/19; 70% rebate 1/1/20; 65% rebate 1/1/21; 60% rebate 1/1/22; 50% rebate 1/1/23
Modoc Tribe of Oklahoma	5.75¢ 5/10/96 and continued at this rate until 2013; no compact as of 6/30/13 and no current sales
Muscogee (Creek) Nation	5.75¢ 2/9/95; 77.25¢ "noncompact" rate 1/4/05; \$1.03 1/1/2010; 51.5¢ + 15¢ tribal tax 8/24/12; \$1.03 (w/ 70% rebate) 9/1/14; 55% rebate 1/1/17; 50% rebate 5/1/18
Osage Tribe	5.75¢ 2/17/93; 85.75¢ (w/ 40¢ rebate) 1/1/05; 51.5¢ + 15¢ tribal tax 12/5/08; \$1.03 w/ 70% rebate 11/1/13; 65% rebate 1/1/15; 60% rebate 1/1/16; 50% rebate 1/1/17
Osage Tribe border rate	5.75¢ 2/17/93; 25.75¢ 1/1/05; border rate eliminated 11/1/13
Otoe-Missouria Tribe	Date of first sales unknown; 51.5¢ + 15¢ tribal tax 8/21/08; \$1.03 (w/ 75% rebate) 7/1/13; 70% rebate 1/1/15; 65% rebate 1/1/16; 50% rebate 1/1/17
Otoe-Missouria border rate	Date of first sales unknown;; 25.75¢ 8/21/08; border rate eliminated as of 7/1/13
Ottawa Tribe of Oklahoma	Date of first sales unknown; 5.75¢ 9/6/01; 5.75¢ (exception rate) 1/1/05; \$1.03 w/ 94% rebate 10/1/13; 92% rebate 1/1/16; 85% rebate 1/1/17; 80% rebate 1/1/18; 75% rebate 1/1/19; 70% rebate 1/1/20; 65% rebate 1/1/21; 60% rebate 1/1/22; 50% rebate 1/1/23
Pawnee Nation of Oklahoma	Date of first sales unknown; 51.5¢ + 15¢ tribal tax 10/31/08; \$1.03 (w/ 70% rebate) 11/1/13; 65% rebate 1/1/15; 60% rebate 1/1/16; 50% rebate 1/1/17

Tribe	Changes in State Taxation
Ponca Tribe of Oklahoma	5.75¢ 10/7/98; 25.75 1/1/05; 77.25 "noncompact" 10/7/08; 51.5¢ + 15¢ tribal tax 9/16/10; \$1.03 (w/ 70% rebate) 12/1/13; 65% rebate 1/1/15; 60% rebate 1/1/16; 50% rebate 1/1/17
Citizen Potawatomi Nation	5.75¢ 1/4/93; initial compact terminated 9/30/03 (no record of "new" compact); 51.5¢ + 15¢ tribal tax 6/1/09; \$1.03 (w/ 60% rebate) 11/1/13; 50% rebate 1/1/16
Quapaw Tribe of Indians	5.75¢ 1/1/93; 5.75¢ (exception rate) 1/1/05; \$1.03 w/ 94% rebate 10/1/13; 92% rebate 1/1/16; 85% rebate 1/1/17; 80% rebate 1/1/18; 75% rebate 1/1/19; 70% rebate 1/1/20; 65% rebate 1/1/21; 60% rebate 1/1/22; 50% rebate 1/1/23
Sac and Fox Nation	5.75¢ 3/28/93; 85.75¢ (w/ 40¢ rebate) 1/1/05; 51.5¢ + 15¢ tribal tax (via most-favored nation) 12/5/08; \$1.03 w/ 65% rebate 1/1/14; 55% rebate 1/1/16; 60% rebate 1/1/16; 50% rebate 1/1/18
Seminole Nation of Oklahoma	5.75¢ 1/1/93; 85.75¢ (w/ 40¢ rebate) 1/1/05; \$1.03 w/ 70% rebate 11/1/13; 65% rebate 1/1/15; 60% rebate 1/1/16; 55% rebate 1/1/17; 50% rebate 1/1/18
Seneca-Cayuga Tribe of Oklahoma	5.75¢ 10/17/96; 25.75¢ 1/1/05; 77.25 "noncompact" rate as of 10/17/06; \$1.03 as of 1/1/11 (sell only tribally manufactured brand for which they pay no state tax)
Shawnee Tribe	No record of compacts or cigarette sales
Thlopthlocco Tribal Town	5.75¢ 2/27/97; 25.75¢ 1/1/05; 85.75¢ (w/ 40¢ rebate) 2/16/07; \$1.03 w/ 70% rebate 11/1/13; 65% rebate 1/1/15; 60% rebate 1/1/16; 50% rebate 1/1/17
Tonkawa Tribe of Oklahoma	5.75¢ 6/10/94; 5.75¢ 6/9/04; \$1.03 (w/ 75% rebate) 10/15/13; 65% rebate 1/1/15; 55% rebate 1/1/17; 50% rebate 1/1/18
Wichita and Affiliated Tribes	5.75¢ 11/22/99; 25.75¢ 1/1/05; 85.75 (w 40¢ rebate) 11/3/06; 51.5¢ + 15¢ tribal tax 10/16/08; \$1.03 (w/ 60% rebate) 5/1/14; 50% rebate 1/1/17
Wyandotte Nation	5.75¢ 3/22/93; 5.75¢ "exception rate" 1/1/05; \$1.03 w/ 94% rebate 10/1/13; 92% rebate 1/1/16; 85% rebate 1/1/17; 80% rebate 1/1/18; 75% rebate 1/1/19; 70% rebate 1/1/20; 65% rebate 1/1/21; 60% rebate 1/1/22; 50% rebate 1/1/23

*The data for this table come from a library of state-tribal tobacco compacts maintained by the Oklahoma Secretary of State. This can be publicly accessed at <https://www.sos.ok.gov/gov/tribal.aspx>. The data on the table are current as of January 15, 2015.

Tribal taxation.

The tracking of tribal taxation for Oklahoma cigarette sales would be enormously complicated. Not least, this is because the majority of Oklahoma's tribal smoke shops are tribally owned. Thus, tribes obtain revenue from these operations not through taxation but via mark-up. The management of mark-up rates for these stores is thus not likely to be documented in legislative or administrative records or to be counted as a per-pack rate.

For tribes that license smoke shop operation to private entrepreneurs, we have seen that tribes do tend to charge a tribal excise tax on cigarette sales. From a legal deposition, we were able to see that the Muscogee (Creek) Nation had an excise rate of 6 cents per pack (Muscogee, 2010). More supporting evidence for this is provided by the state-tribal wave of compacts, which generally negotiated tribal excise tax rates of 15 cents per pack. Given that negotiators for the state would have wanted for these tribal rates to be as high as possible, we can infer that 15 cents per pack can serve as a reasonable upper-bound estimate for most tribal rates in the state. Adding to the complexity of tribal taxation, a given tribe may subject different outlets, such as casino versus non-casino locations, to different excise rates.

Conclusion

This paper has provided a detailed history of cigarette taxation in Oklahoma. The history of tax rate changes has been presented in a tabular format so that it can be easily referenced and used by researchers. In this we have confirmed that tax rate data for nontribal sales published in the *Tax Burden* is largely correct.

An additional intent of our paper has been to demonstrate how broader databases on the taxation of tribal cigarette sales can be created and where information for such databases can be found. We have shown that, because of Supreme Court opinion for how the state taxation of tribal sales should be

arranged, the prime source for such data will likely be state-tribal compacts.

This paper has also attempted to create a thorough trail for the documentation of the main historical controversies in Oklahoma cigarette taxation. Most striking in this history has been the contentious nature of state-tribal dealings and negotiations on this issue in Oklahoma.

About the Authors

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About the Oklahoma Tobacco Research Center

The Oklahoma Tobacco Research Center (OTRC) exists to reduce the burden of tobacco related disease in Oklahoma by stimulating the generation and dissemination of knowledge and the implementation and diffusion of effective practices. Its goals are to:

- Facilitate research that advances the prevention and treatment of tobacco use and tobacco-related disease.
- Promote the dissemination and exchange of knowledge relevant to the reduction of tobacco use.
- Foster the implementation and diffusion of evidence-based practices relevant to the prevention and treatment of tobacco use and tobacco-related disease.

About Tobacconomics

Tobacconomics is a collaboration of leading researchers who have been studying the economics of tobacco control policy for nearly 30 years. The team is dedicated to helping researchers, advocates and policymakers access the latest and best research about what's working—or not working—to curb tobacco consumption and the impact it has on our economy. As a program of the University of Illinois at Chicago, Tobacconomics is not affiliated with any tobacco manufacturer. Visit www.tobacconomics.org or follow us on Twitter www.twitter.com/tobacconomics.

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