Fact Sheet

Tobacco Tax Basics: An Introduction to Key Considerations for States

The Tobacco Control Legal Consortium has created a series of guides to provide an overview of key considerations regarding the taxation of tobacco by states. The guides can be used either as a starting point or as a refresher for organizations and individuals interested in reviewing existing state tobacco tax laws for possible modification or advancing new legislative proposals. The information contained in this document is not intended to constitute or replace legal advice. For this reason, we encourage you to consult with local legal counsel before moving forward with any measures. For additional information on tobacco taxation and other issues related to tobacco pricing, please contact the Consortium.

This fact sheet addresses key considerations regarding the taxation of cigarettes, non-cigarette tobacco products (often called "other tobacco products" or "OTPs"), and related measures. It is designed to complement other materials developed by the Consortium that provide detailed analyses of specific aspects of tobacco taxation. We have cross-referenced these materials in the text for your convenience.

Public Health Rationale for Tobacco Tax Increases

Price increases are necessary to end the tobacco epidemic. In 2007, the Institute of Medicine (IOM) issued a blueprint for action "to reduce smoking so substantially that it is no longer a public health problem for our nation," calling for a two-pronged strategy to: (1) strengthen and fully implement traditional, evidence-based tobacco control measures; and (2) change the federal regulatory landscape to allow regulation of tobacco product content, design, marketing, and distribution.[1] The IOM specifically cited cigarette and other tobacco product price increases as one of the most effective tobacco control measures for reducing tobacco use.[2] The U.S. Centers for Disease Control and Prevention (CDC), in accord with the IOM, asserts that full implementation of price increases—in combination with other evidence-based measures, including smoke-free workplace policies, aggressive media campaigns, access to cessation services, comprehensive advertising bans, and graphic warning labels—is necessary to end the nation's tobacco epidemic.[3]

Raising tobacco taxes reduces tobacco use and increases state revenue. Raising tobacco excise taxes has substantial, long-lasting beneficial effects on public health and state economies. Generally, as prices go up, consumption of tobacco products goes down. Raising cigarette excise taxes reduces consumer demand and thereby reduces tobacco use among adults and youth, prompts individuals to attempt to quit, discourages youth initiation, increases state revenue, and yields considerable health savings for individuals (smokers and non-smokers exposed to tobacco smoke) and the population-at-large.[4] Evidence from the United States indicates that a 10 percent increase in the price of cigarettes, when maintained against inflation, reduces youth smoking rates by at least 6.5 percent, adult smoking rates by 2 percent, and overall consumption by about 4 percent.[5]

New York's recent tobacco tax increases demonstrate the effectiveness of this strategy. The State of New York has led the nation in showing that periodically raising a state's cigarette excise tax can significantly decrease consumption by adults and youth. In the ten years between 2000 and 2010, New York increased its cigarette excise tax three times, from $0.56 per pack in 2000, to $2.75 in 2010.[6] In the late 1990's, CDC data indicated that New York's adult smoking rate closely mirrored the national rate.[7] Over the next decade, as New York repeatedly increased the rate of its cigarette tax, the state's adult smoking rate fell well below the national average.[8] Even greater reductions have been experienced in youth smoking.[9] New York currently has the highest cigarette excise tax in the country, at $4.35 per pack.[10] Revenue from New York's cigarette excise tax is dedicated to investments in the state's health care programs.[11]

The Importance of Earmarking a Portion of Tax Revenue for Prevention Programs

Greater gains can be achieved by dedicating a portion of tax revenue to prevention programs. States can achieve much greater gains in the reduction of public health costs by earmarking a portion of tobacco tax revenue for tobacco prevention, cessation, and related public health programs. The CDC recommends that all states fund tobacco control activities in the range of $15 to $20 per capita, depending on each state's population, demography, and prevalence of tobacco use.[12] The more states invest in comprehensive tobacco control programs, the greater the reduction in smoking, and the longer that programs are sustained, the greater their impact.[13] The CDC has reported that if all states fully funded their tobacco control programs at the CDC-recommended level, starting in fiscal year 2009, in five years, an estimated 5 million fewer persons in the U.S. would have smoked and literally hundreds of thousands of premature deaths related to tobacco would have been prevented *each year*.[14] Longer investments would achieve even greater results. States that have made substantial, sustained investments in comprehensive tobacco control programs have seen cigarette sales decrease more than twice as much as in the U.S. as a whole and have found that as program spending increased, smoking prevalence among adults and youth declined faster.[15]

Tobacco Tax Increases Reduce Use

Tobacco taxes have a progressive effect on public health. Opponents often argue that tobacco tax increases are regressive, in that they disproportionately impact persons of lesser economic means who are more price-sensitive. However, the contention that tobacco tax increases are strictly regressive is the subject of ongoing debate among economists.[16] While it is true that as tobacco taxes increase, lower-income consumers spend a larger proportion of their incomes on tobacco products, an analysis that looks only at the negative effect that a tobacco tax increase has on consumers' buying power ignores important factors that have a positive effect on consumption patterns. Although most smokers want to quit,[17] the desire for immediate gratification interferes with the long-term goal of quitting. Regressivity arguments can be countered effectively by emphasizing the progressive effects of the increases—in that tax increases reduce tobacco use, initiation, and the substantial health and economic costs tobacco causes—and by emphasizing that the short- and long-term public health benefits of tobacco tax reforms far outweigh any claimed economic injustice. According to a recent estimate, the monetary value of the health damage from a pack of cigarettes is more than $35 for an average smoker, "… implying that optimal taxes should be very large and that cigarette taxes are likely progressive."[18]

Lower-income tobacco users stand to benefit the most from tobacco tax increases. Lower-income consumers are more likely to reduce tobacco use or quit smoking in response to cigarette tax increases than higher-income persons and, therefore, are more likely to experience significant monetary savings from a tax increase, as well as the greatest share of the public health benefits (e.g., improvements in health and productivity for smokers and improvements in health for family members from reduced exposure to secondhand smoke). Notably, polls consistently find strong support for tobacco tax increases among lower-income populations.[19]

Reviewing Tobacco Tax Laws and Related Policies for Possible Reform

When analyzing a state's cigarette and other tobacco tax laws for possible reform, it is critical to examine the state's entire tobacco control regulatory scheme, including not only tobacco tax laws but also tobacco licensing, retail sales, youth access, and other regulatory provisions.

Review definitions. Definitions of *cigarette* and other *tobacco product* may not be identical in different sections of state statutes. A thorough review of all sections of law where these terms are defined is necessary to ensure that proposed changes will apply as intended and avoid unintended consequences.

Confer with state agencies. It is essential to confer periodically with officials from departments of revenue, commerce, health, human services and/or other departments of state government that have responsibilities for regulating tobacco to ensure that their perspectives and concerns are taken into account in tax reform proposals, to educate them about advocates' positions, and to provide for inter-agency communication and cooperation regarding effective enforcement of a jurisdiction's tobacco laws.

Carefully review legal authority. It is also necessary to understand the interplay between federal, state, and local laws that may affect the taxation of tobacco,[20] including analysis of whether any state or federal laws expressly or impliedly preempt desired state or local policies. There are many variations among states with regard to how cigarettes and non-cigarette tobacco products are taxed. For example, in a few states, including Alaska, Illinois, Ohio and New York, local governments levy excise taxes on cigarettes,[21] while in other states, cigarettes or other tobacco products may be subject to, or exempted from, retail sales taxes.[22]

Review entire tobacco statutory scheme for possible reform(s). Due, in large part, to changes spurred by the industry, tobacco laws and policies of many states become outdated and merit review for possible reform. Two tobacco tax examples are noteworthy:

- **High-tech tax stamps**. New technologies have led to the development of high-tech cigarette tax stamps that are much harder to counterfeit than, and easier to distinguish from, than existing cigarette tax stamps. Switching to the new tax stamp technology can greatly improve a state's ability to prevent contraband trafficking, reduce other forms of tobacco tax evasion, and thereby substantially increase tobacco tax revenues. The new tax stamp technologies also make it possible to stamp tobacco products that previously could not be stamped. In 2005, California became the first state to introduce high-tech cigarette tax stamps, and immediately experienced a substantial increase in tax revenue without any corresponding increase in the rate of tax. Just two years later, California reported that tax evasion in the state had dropped by 37 percent due to a combination of the new tax stamps and increased enforcement.[23] For these reasons, it is timely for states to consider whether switching to a high-tech stamping process would fit within legislative proposals to reform tobacco taxation.

- **Influx of new smokeless and electronic delivery tobacco products**. The recent influx of many new and novel types of tobacco products has caused tobacco control laws in many states to need updating. A thorough review of all tobacco-related laws will likely reveal provisions other than tobacco tax laws that would benefit from being updated. For example, in Minnesota, prior to the passage of the Tobacco Modernization and Compliance Act of 2010, the youth access prohibition against selling tobacco products in open displays applied only to products that were smoked or chewed. The youth access law had been written long before the introduction of new types of smokeless tobacco products that are, for instance, dissolved in the user's mouth, rather than chewed. As amended, the youth access definition of "tobacco" corresponds with a newly amended definition of "tobacco product" in the tobacco tax law, reaching sticks, strips, orbs, and the like, with the result that these products can no longer be shelved in open displays within the state, except in tobacco products shops that are off-limits to minors.[24]

In sum, a thorough analysis of all state laws that affect tobacco will help states avoid overlooking critical components or making administrative errors that could jeopardize projected revenue outcomes or limit public health benefits, and may help pinpoint other tobacco control laws that are also in need of reform. The above list of considerations, while not comprehensive, is indicative of the need for a detailed inquiry to guide tobacco tax reform efforts.

Policy Options for Raising Tobacco Taxes

Efforts to reform state cigarette and other tobacco product tax laws may involve several inter-related policy options. Below is a brief summary of key options. For more detailed discussions on selected topics, please see the Consortium's publications. Some Consortium publications are cross-referenced in this summary. In addition, all Consortium publications can be found on the website of its parent organization, the Public Health Law Center, alongside additional relevant resources published by the Center. Should you have specific questions, please feel free to contact the Consortium staff to request technical assistance.

Modernize tobacco-related definitions. An integral component in any effort to raise tobacco taxes is to modernize statutory definitions of *cigarette* and *tobacco product* by updating these definitions to close existing loopholes and address any other ambiguities regarding the taxation of various tobacco products. Three examples stand out:

- **Little cigars**. Amending the statutory definition(s) of *cigarette* to include *little cigars*—products which are nearly indistinguishable from standard cigarettes in packaging and appearance and are experienced by smokers as cigarettes—will discontinue the classification of little cigars as a *tobacco product* or a *cigar* for tax purposes. Instead, little cigars will be taxed as cigarettes and treated as such for regulatory purposes.

- **Tobacco products**. By defining *tobacco product* broadly to include virtually any and all new and novel products introduced by the industry, including sticks, strips, and orbs, electronic cigarettes or similar electronic delivery devices, shisha (i.e., hookah or waterpipe tobacco), and bidis, states can ensure that all such products will be taxed and regulated properly as tobacco products. Minnesota recently accomplished this purpose with the passage of the Tobacco Modernization and Compliance Act of 2010.[25]

- **Roll-your-own tobacco**. Current law can be amended to add a specific, comprehensive definition of *roll-your-own tobacco* ("RYO") that clearly indicates its purpose as a product used for making cigarettes (including so-called little cigars), and to tax RYO at the same rate as regular cigarettes.[26] RYO is particularly attractive to youth and adult smokers looking for more affordable options. States lose a substantial portion of tobacco tax revenues when smokers switch to lower-taxed RYO tobacco products; in addition, fewer smokers succeed in quitting and health care cost savings are diminished.[27]

Raise cigarette and tobacco product taxes to reduce use among youths and adults. Tobacco tax increases prompt smokers and other tobacco users to quit or cut back, discourage youth initiation, decrease health care costs, and increase state revenue. That said, the nation's progress in reducing smoking rates among both young persons and adults has stalled. From 2003 to 2007, the smoking rate among high school students remained relatively unchanged (less than a 2 percent decline) and the same was true from 2004 to 2007 for adults (20.9 to 20.6 percent drop).[28] Substantial cuts to state tobacco control and prevention programs and stagnating cigarette prices are among the reasons that progress has stalled. Increasing cigarette and other tobacco taxes and allocating a portion of the increased revenue to tobacco cessation and prevention will help reverse this trend.[29]

- A per pack increase in cigarette taxes brings in more new revenue than is lost from declines in sales or tax avoidance in reaction to the introduction of a tax increase.[30]

- Since 2002, 47 states, plus Washington, D.C. and several U.S. territories, have increased their cigarette tax rates a total of 105 times; of these, 29 states, plus Washington, D.C., have passed more than one increase during that period of time.[31] State cigarette tax rates currently range from 30 cents per pack (VA) to $4.35 per pack (NY). Not surprisingly, the few, major tobacco-producing states have very low cigarette tax rates, averaging just 48.5 cents per pack, compared to other states, which average $1.59 per pack. For all 50 states and Washington, D.C., the overall average state cigarette tax rate is currently $1.46 per pack.[32]

- States' quit-line data indicate that incoming calls increase dramatically after a significant tax increase takes effect. Wisconsin, for example, received 20,000 calls in the first two months after it implemented a $1.00 per pack increase, compared to its typical call rate of 9,000 per year.[33]

- A few states have explored the idea of rolling back tobacco taxes as a supposed strategy for increasing revenue. This strategy encourages consumers from other states to essentially evade presumably higher taxes in their own states by crossing the border to purchase products at a lower price, with the supposed result that higher rates of consumption will increase tax revenue in the state that institutes a rollback. Bills have been introduced unsuccessfully in Rhode Island and New Jersey. New Hampshire recently enacted a 10 cent rollback with this purpose in mind, but monthly revenue reports collected by its Department of Revenue Administration indicate that this strategy has been unsuccessful, to date, resulting in lower monthly revenue and no perceived public health benefit.[34]

Tax non-cigarette tobacco products at a tax rate that parallels (is equivalent to) the tax rate on cigarettes. Often discussed in terms of achieving *tobacco tax equity* or *parity*, this concept refers to policies that are designed to ensure that the rates of tax for cigarettes and all other tobacco products are roughly equivalent. Taxing non-cigarette tobacco products at rates that are equivalent to cigarette tax rates can be accomplished by increasing the taxes on non-cigarette tobacco products to parallel cigarette tax rates, which are typically higher prior to amending the tax laws for this purpose.

- **Make increases to cigarette and non-cigarette tobacco taxes at the same time**. When a state opts *not* to increase smokeless and other non-cigarette tobacco taxes at the same time that it increases the cigarette tax rate, it misses a valuable opportunity to improve the public's health by reducing youth and adult use of tobacco and securing additional state revenue. Increasing the tax on non-cigarette tobacco products to parallel or achieve parity with cigarette taxes will deter youth from experimenting with these products as less expensive alternatives to cigarettes. It will also discourage current smokers from switching between cigarettes and cheap cigars or smokeless products, a practice referred to as *dual use*, trading down, so to speak, based on cost differentials. Currently, in most jurisdictions, many types of non-cigarette tobacco products, including smoked and smokeless products, such as moist and dry snuff, orbs, sticks, strips, lozenges, RYO and pipe tobacco, are considerably less expensive than cigarettes.

- **Establish a minimum tax rate for each major category of tobacco products to match the cigarette tax rate**. A state can maximize public health and revenue outcomes by establishing a minimum tax rate for each major category of tobacco products and linking the minimum rates directly to the current cigarette tax rate, thereby making the non-cigarette tobacco tax rates equivalent to the state's cigarette tax rate.[35] For example, moist snuff (e.g., *Copenhagen*, *Skoal*) is a tobacco product that is typically sold in a 1.2 ounce tin. A minimum tax for moist snuff can be set in an amount that is equal to the total tax on a pack of 20 cigarettes per each 1.2 ounce tin. If a state taxes moist snuff as a percentage of its wholesale price (e.g., 95 percent of the wholesale price), and the cigarette tax is set at $3.00 per pack, the minimum tax rate for moist snuff would be set at $3.00 per 1.2 ounce tin, or 95 percent of the product's wholesale price, whichever rate is higher.[36]

Adjust for inflation by providing for a periodic review of all tobacco tax rates. A state can account for inflation by building in an automatic, periodic review of all of its tobacco tax rates by an applicable state agency (e.g., a department of revenue) in order to maintain the real value of the taxes and ensure that the public health impact of the tobacco tax laws is maintained. If not adjusted periodically, the real value of the tax falls over time, as does the real value of the revenue generated by the taxes.

Include an inventory or floor stocks tax. An *inventory tax* or *floor stocks tax* should be included in every proposal to increase cigarette taxes so that the new tax increase will be applied to all cigarettes held in the inventories of wholesalers and retailers on the date the new law takes effect. The amount of an inventory or floor stocks tax is equal to the difference between the new cigarette excise tax rate and the tax rate immediately prior to the increase. If no inventory or floor stocks provision is included in legislation, distributors and others can stockpile cigarettes prior to implementation of the new tax rate, diminishing the initial return on a tax increase. An inventory or floor stocks tax is designed to prevent this problem from occurring.

Earmark a portion of tax revenues for state tobacco control and prevention programs. States can earmark tax revenues for state tobacco control and prevention programs—and the CDC urges *all* states to do so—by including a provision in tobacco tax legislation indicating the percentage of revenue to be allocated to tobacco prevention or other public health programs. Unfortunately, only two states, Alaska and North Dakota (through a combination of state *and* federal funds) are funding their tobacco prevention programs at or near the CDC-recommended levels, and only four other states, Delaware, Hawaii, Maine and Wyoming, are funding tobacco prevention programs at about half of the CDC-recommended levels.[37]

Allow local taxation of tobacco, if not prohibited by express or implied preemption. Local governments in a few states (Alaska, Illinois, New York and Ohio) levy tobacco excise taxes in addition to state and federal tobacco taxes. Although local tax rates tend to be small, there are a few notable exceptions. A few communities in Alaska impose an additional tax of $1.00 or more on a pack of cigarettes, including Anchorage, which adds a tax of $1.452 per pack. New York City adds $1.50 per pack of cigarettes, Chicago adds $0.68, and Cook County, Illinois, which encompasses Chicago, imposes an additional $2.00 per pack. Cuyahoga County, Ohio, where Cleveland is situated, imposes a local tax of $0.345.[38] Local policymakers interested in this approach must proceed with caution, with careful attention paid to whether local taxation might be blocked by either express or implied preemption within a given state. Whether or not a locality has the authority to levy tobacco taxes often depends on the scope and contours of its municipal charter, and the extent of its "home rule" powers under state statutes and case law.

Increase penalties for tax evasion and contraband trafficking and enact mechanisms to strengthen enforcement. In some jurisdictions, legislated penalties and fines may be in need of updating. Increasing penalties will generate revenue and may beef up enforcement which, in turn, would further increase revenue. Tobacco tax penalty provisions can be indexed to inflation or to increases in the cigarette or non-cigarette tobacco product tax rates, so that when the tax rate(s) go up, the penalties do too. Indexing penalty provisions by using either method will retain their value over time. To the extent not already in place, statewide tobacco tax-related enforcement efforts also can be fortified by enacting provisions that allow state agencies charged with enforcement responsibilities (e.g., departments of revenue) to collect attorneys' fees and costs from violators and apply a set portion of the amounts collected toward enforcement efforts.

Tobacco Industry Political and Marketing Tactics in Reaction to Tax Increases

State taxation of cigarettes and tobacco products is a well-established policy practice nationwide, with the result that relatively few lawsuits are triggered by policy actions. More often, challenges are politically motivated, driven by the immense power the tobacco industry wields in protecting its products and profit margins.

Multiple tactics are used to blunt the effect of tax increases. Manufacturing data demonstrate that in at least one instance, in 2009, the tobacco industry has shifted both production and packaging to blunt the blow of tax increases in the United States.[39] With regard to the production of cigars, which are sized by weight (small/ large), manufacturers appear to have added weight to small cigars so that they would be taxed at the lower rate that applied to large cigars. Industry data also suggests that RYO has been repackaged as pipe tobacco to avoid higher taxation that would have applied otherwise.[40]

Each year, the tobacco industry spends approximately $10.5 billion—more than $28 million per day—marketing cigarettes and other tobacco products in the United States alone, massively outspending states' tobacco prevention expenditures.[41] In addition, the industry spends millions each year on lobbying to influence federal, state, and local policies.[42] The industry's targeted marketing practices are of particular concern, given the need to reduce youth initiation of tobacco use.[43] At least two longitudinal studies have demonstrated an association between exposure to industry marketing and promotional activities at a young age and subsequent uptake of smoking.[44]

False claims. Many claims made by the industry in opposition to proposed tobacco tax increases are unsupported by facts. The Campaign for Tobacco-Free Kids has developed a detailed fact sheet on this topic, *Responses to Misleading and Inaccurate Cigarette Company Arguments Against State Cigarette Tax Increases*,[45] which provides numerous examples of false claims by the industry, just a few of which are noted here:

- **Raising the price of cigarettes by increasing tobacco taxes will not reduce youth or adult smoking prevalence rates**. In reality, states that have raised tobacco tax rates have seen reductions in smoking among youth and adults.

- **States will receive less net new revenue from cigarette taxes than they expect**. In fact, just the opposite has transpired—*every state that has enacted a significant increase in its cigarette tax has experienced substantial gains in revenue, despite declines in consumption (some of which are attributable to tax increases) and any ongoing or increased tax evasion*.

- **Cigarette tax increases are not a reliable source of future state revenue**. Although increases in tax revenue levels decline gradually as smoking rates decline, the decline in revenue is gradual and predictable and provides greater stability than either state income tax or corporate tax revenues. A state can compensate for the gradual decline in revenue by enacting an automatic, periodic increase in its tobacco tax rates (for example, increasing the tax rate whenever the revenue from the tax falls below an established floor). This can be accomplished by linking the non-cigarette tobacco tax rate directly to the cigarette tax rate so that whenever the cigarette tax is raised, a corresponding increase to the non-cigarette tax rate will be triggered automatically.

Last updated: February 2012

Notes

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[1] INST. OF MEDICINE, ENDING THE TOBACCO PROBLEM: A BLUEPRINT FOR THE NATION (2007), *available at* http://www.iom.edu/Reports/2007/Ending-the-Tobacco-Problem-A-Blueprint-for-the-Nation.aspx.

[2] *Id.*

[3] Michael Tynan et. al., CTRS. FOR DISEASE CONTROL & PREVENTION, *CDC Grand Rounds: Current Opportunities in Tobacco Control*, 59 MORBIDITY & MORTALITY WKLY. REP. 487 (2010), *available at* http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5916a3.htm [hereinafter CDC GRAND ROUNDS].

[4] *Id.*

[5] *Id.* at 487 n.6.

[6] NEW YORK STATE, DIV. OF THE BUDGET, *2010-2011 Executive Budget – Briefing Book*, N.Y. STATE GOV., [hereinafter NEW YORK *2010-2011 Executive Budget*], http://www.budget.ny.gov/pubs/archive/fy1011archive/eBudget1011/fy1011littlebook/HealthierNY.html (last visited Feb. 23, 2012).

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *See* ANN BOONN, CAMPAIGN FOR TOBACCO-FREE KIDS, STATE CIGARETTE TAX RATES & RANK, DATE OF LAST INCREASE, ANNUAL PACK SALES & REVENUES, AND RELATED DATA (2012), *available at* http://www.tobaccofreekids.org/research/factsheets/pdf/0099.pdf [hereinafter CTFK, STATE CIGARETTE TAX RATES].

[11] NEW YORK *2010-2011 Executive Budget*, *supra* note 6.

[12] CTRS. FOR DISEASE CONTROL & PREVENTION, BEST PRACTICES FOR COMPREHENSIVE TOBACCO CONTROL PROGRAMS—2007 11 (2007), *available at* http://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2007/BestPractices_Complete.pdf.

[13] CDC GRAND ROUNDS, *supra* note 3, at 488 n.10.

[14] *Id.* at 488 n.10.

[15] *Id*. at 488 nn.10-12.

[16] *See, e.g.*, JONATHAN GRUBER & BOTOND KOSZIGI, A MODERN ECONOMIC VIEW OF TOBACCO TAXATION, PARIS: INT'L UNION AGAINST TUBERCULOSIS AND LUNG DISEASE (2008), *available*

at http://www.tobaccofreeunion.org/assets/Technical%20Resources/Economic%20Reports/A%20Modern%20Economic%20View%20of%20Tobacco%20Taxation%20-%20EN.pdf [hereinafter Gruber & Koszigi]; *but see, e.g.*, Nikolay Gospodinov & Ian Irvine, *Tobacco Taxes and Regressivity*, 28 J. HEALTH ECON. 375, 375-84 (2009).

[17] CTRS. FOR DISEASE CONTROL & PREVENTION, FAST FACTS, n.11 (2012) ("Approximately 69% of smokers want to quit completely. Approximately 52 % of smokers attempted to quit in 2010.")

[18] Gruber & Koszigi, *supra* note 16, at 1.

[19] ANN BOONN, CAMPAIGN FOR TOBACCO-FREE KIDS, RESPONSES TO MISLEADING AND INACCURATE CIGARETTE COMPANY ARGUMENTS AGAINST STATE CIGARETTE TAX INCREASES (2010), *available at* http://www.tobaccofreekids.org/research/factsheets/pdf/0227.pdf [hereinafter CTFK, RESPONSES TO MISLEADING AND INACCURATE CIGARETTE COMPANY ARGUMENTS].

[20] *See* TOBACCO CONTROL LEGAL CONSORTIUM, STATE TAXATION OF NON-CIGARETTE TOBACCO PRODUCTS (2012) [hereinafter TCLC, TAXATION OF NON-CIGARETTE TOBACCO PRODUCTS]; *see also* TOBACCO CONTROL LEGAL CONSORTIUM, STATE TAXATION OF CIGARETTES (2012).

[21] ANN BOONN, CAMPAIGN FOR TOBACCO-FREE KIDS, TOP COMBINED STATE-LOCAL CIGARETTE TAX RATES (2011), *available at* http://www.tobaccofreekids.org/research/factsheets/pdf/0267.pdf [hereinafter CTFK, TOP COMBINED STATE-LOCAL CIGARETTE TAX RATES].

[22] TCLC, TAXATION OF NON-CIGARETTE TOBACCO PRODUCTS, *supra* note 20.

[23] ANN BOONN, CAMPAIGN FOR TOBACCO-FREE KIDS, THE CASE FOR HIGH-TECH CIGARETTE TAX STAMPS (2010), *available at* http://www.tobaccofreekids.org/research/factsheets/pdf/0310.pdf.

[24] Tobacco Modernization and Compliance Act, 2010 Minn. Session Laws ch. 305; *see also Passage of the Tobacco Modernization and Compliance Act*, PUB. HEALTH LAW CENTER (May 12, 2010), http://www.publichealthlawcenter.org/content/passage-tobacco-modernization-and-compliance-act-2010.

[25] *Id.*

[26] *See* TOBACCO CONTROL LEGAL CONSORTIUM, ROLL YOUR OWN TOBACCO MACHINES: AN OVERVIEW (2012); *see also* TOBACCO CONTROL LEGAL CONSORTIUM, REGULATING ROLL YOUR OWN TOBACCO MACHINES (2012).

[27] ANN BOONN, CAMPAIGN FOR TOBACCO-FREE KIDS, THE PROBLEM WITH ROLL-YOUR-OWN (RYO) TOBACCO (2012), *available at* http://www.tobaccofreekids.org/research/factsheets/pdf/0336.pdf.

[28] CDC GRAND ROUNDS, *supra* note 3, at 487.

[29] CAMPAIGN FOR TOBACCO-FREE KIDS, TOBACCO TAXES: A WIN-WIN FOR CASH-STRAPPED STATES 6 n.4 (2010), *available at* http://www.rwjf.org/files/research/20100209tobaccotax.pdf.

[30] CAMPAIGN FOR TOBACCO-FREE KIDS, EXPLANATIONS AND SOURCES FOR PROJECTIONS OF NEW REVENUES & BENEFITS FROM STATE CIGARETTE TAX INCREASES (2012), *available at* http://www.tobaccofreekids.org/research/factsheets/pdf/0281.pdf.

[31] ANN BOONN, CAMPAIGN FOR TOBACCO-FREE KIDS, STATE CIGARETTE EXCISE TAX RATES & RANKINGS (2011), *available at* http://www.tobaccofreekids.org/research/factsheets/pdf/0097.pdf.

[32] CTFK, STATE CIGARETTE TAX RATES, *supra* note 10.

[33] ANN BOONN, CAMPAIGN FOR TOBACCO-FREE KIDS, RAISING STATE CIGARETTE REDUCES SMOKING, ESPECIALLY AMONG KIDS (AND THE CIGARETTE COMPANIES KNOW IT) (2009), *available at* http://www.tobaccofreekids.org/research/factsheets/pdf/0146.pdf.

[34] NEW HAMPSHIRE, DEP'T. OF ADMINISTRATIVE SERVICES, *State of New Hampshire Monthly Revenue Focus*, NEW HAMPSHIRE STATE GOV., http://admin.state.nh.us/accounting/revenue_reports.asp (last visited February 24, 2012).

[35] *See* ANN BOONN, CAMPAIGN FOR TOBACCO-FREE KIDS, THE MANY WAYS STATES CAN RAISE REVENUES WHILE ALSO REDUCING TOBACCO USE AND RELATED HARMS & COSTS (2011), *available at* http://www.tobaccofreekids.org/research/factsheets/pdf/0357.pdf.

[36] *See* TOBACCO CONTROL LEGAL CONSORTIUM, TAXATION OF NON-CIGARETTE TOBACCO PRODUCTS (2012).

[37] CAMPAIGN FOR TOBACCO-FREE KIDS, A BROKEN PROMISE TO OUR CHILDREN: THE 1998 STATE TOBACCO SETTLEMENT THIRTEEN YEARS LATER ii (2011), *available at* http://www.tobaccofreekids.org/content/what_we_do/state_local_issues/settlement/FY2012/2011Broken_Promise_Report.pdf

[38] CTFK, TOP COMBINED STATE-LOCAL CIGARETTE TAX RATES, *supra* note 21.

[39] Daniel S. Morris, *Tobacco Manufacturing Data Demonstrate Industry Product Switching in Response to Tax Increases*, 19 TOBACCO CONTROL 421 (2010).

[40] *Id.* at 421 n.3.

[41] JESSICA GUILFOYLE, CAMPAIGN FOR TOBACCO-FREE KIDS, TOLL OF TOBACCO IN THE UNITED STATES OF AMERICA (2011), *available at* http://www.tobaccofreekids.org/research/factsheets/pdf/0072.pdf.

[42] *Id.*

[43] *See* MEG RIORDAN, CAMPAIGN FOR TOBACCO-FREE KIDS, TOBACCO COMPANY MARKETING TO KIDS (2011), *available at* http://www.tobaccofreekids.org/research/factsheets/pdf/0008.pdf.

[44] John P. Pierce, Elizabeth Gilpin & Won S. Choi, *Sharing the Blame: Smoking Experimentation and Future Smoking-Attributable Mortality due to Joe Camel and Marlboro Advertising and Promotions*, 8 TOBACCO CONTROL 37 (1999).

[45] CTFK, RESPONSES TO MISLEADING AND INACCURATE CIGARETTE COMPANY ARGUMENTS, *supra* note 19.