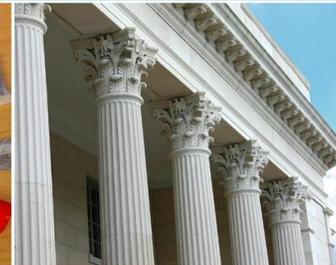




Tobacco Control  
Legal Consortium



## U.S. Local Tobacco Tax Authority: A 50-State Review

The following chart is a snapshot of the U.S. landscape of local government authority to tax tobacco products as of January 1, 2016. Based on our review of the laws in fifty states, twenty-one states explicitly prohibit local governments from imposing an excise tax on tobacco products and seven states allow local governments to adopt such a tax. The chart contains cites to the taxing authority, indicates whether the state follows [Dillon's Rule or Home Rule](#), identifies the tobacco products covered under each state's authority, and includes additional information. Please contact the Tobacco Control Legal Consortium for information on the remaining twenty-three states, for which laws regarding local authority to tax tobacco are unclear.

State	Dillon's or Home Rule	Local Taxation Allowed?	Tobacco Products Covered	Citation	Comments
Alabama	Dillon's Rule (only for certain municipalities)	No (after 2004)	Cigarettes and other tobacco products	ALA. CODE § 40-25-2 (2015); ALA. CODE § 40-23-2.1 (2015)	Alabama has hundreds of local tobacco taxes. See, e.g., <a href="http://revenue.alabama.gov/tobaccotax/t_report.pdf">http://revenue.alabama.gov/tobaccotax/t_report.pdf</a> and <a href="http://revenue.alabama.gov/tobaccotax/law/coacts.cfm">http://revenue.alabama.gov/tobaccotax/law/coacts.cfm</a> .  However, it appears that local governments may not adopt new tobacco taxes after May 18, 2004: "The increases levied by this section shall be exclusive and shall be in lieu of any other or additional local taxes and/or license fees, county or municipal, imposed on the sale or use of cigarettes and/or other tobacco products. Notwithstanding the foregoing, an act of the Legislature or an ordinance or resolution by a taxing authority passed or enacted on or before May 18, 2004, imposing a local tax and/or license fee shall remain operative, but no additional local tax and/or license fee may thereafter be levied on the sale of cigarettes and/or other tobacco products." ALA. CODE 1975 § 40-25-2.

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State	Dillon's or Home Rule	Local Taxation Allowed?	Tobacco Products Covered	Citation	Comments
Alaska	Home Rule	Yes	Cigarettes or other tobacco products	ALASKA STAT. § 29.35.010(6) (2015); ALASKA STAT. § 43.50.150(D) (2015)	Alaska is a home rule state and it provides local governments with the power "to levy a tax or special assessment." ALASKA STAT. § 29.35.010(6) More specifically, the Alaska Department of Revenue "may enter into an agreement with a municipality that collects a tax on cigarettes. . . ." ALASKA STAT. § 43.50.150(D) Multiple jurisdictions in Alaska have local tobacco taxes: <a href="https://www.tobaccofreekids.org/research/factsheets/pdf/0304.pdf">https://www.tobaccofreekids.org/research/factsheets/pdf/0304.pdf</a>
Arkansas	Dillon's Rule	No	Tobacco products	ARK. CODE ANN. § 26-73-103 (2015); ARK. CODE ANN. § 26-57-259 (2015)	One provision of the code contains a preemption clause: "A local government shall not levy a tax on fuel, tobacco, or alcoholic beverages except as authorized by law." ARK. CODE ANN. § 26-73-103  Another provision allows local government regulation in certain areas but does not specifically mention taxes: "This act and the rules and other actions of the Arkansas Tobacco Control Board shall not be construed or interpreted so as to preempt or in any other manner qualify or limit the enactment and enforcement of any federal, state, county, municipal, or other local regulation of the <i>manufacture, sale, storage, or distribution</i> of tobacco products that is more restrictive than this act or the rules and regulations promulgated by the board." (Emphasis added) ARK. CODE ANN. § 26-57-259  Note that Arkansas has an interesting state tax system where border towns have a lower state tax rate to discourage cross-border shopping. See ARK. CODE ANN. § 26-57-208
California	Dillon's Rule (only for certain municipalities)	No	Cigarettes and tobacco products	CAL. REV. & TAX. CODE § 30111 (2015); CAL. REV. & TAX. CODE § 30462 (2015)	Clear preemption: "The taxes imposed by this part are in lieu of all other state, county, municipal, or district taxes on the privilege of distributing cigarettes or tobacco products." CAL. REV. & TAX. CODE § 30111  Note: the California legislature passed a bill in March 2016 that would permit county tobacco taxes as of January 1, 2017 if signed into law by the governor. <a href="#">AB 10 X2</a> (Bloom)

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Colorado	Dillon's Rule (only for certain municipalities)	Yes	Cigarettes and tobacco products	<p>COLO. REV. STAT. ANN. § 39-28-112 (2015);</p> <p>COLO. REV. STAT. ANN. § 39-28.5-109 (2015);</p> <p>COLO. REV. STAT. ANN. § 39-22-623 (2015)</p>	<p>Colorado grants local governments the authority to impose a tax on cigarettes and tobacco products:</p> <p>"No provision of this article shall be construed to prevent the imposing, levying, and collecting of any tax upon sales of cigarettes or upon the occupation or privilege of selling cigarettes by any city or town in this state, nor shall the provisions of this article be interpreted to affect any existing authority of local municipalities to impose a tax on cigarettes to be used for local and municipal purposes." COLO. REV. STAT. ANN. § 39-28-112.</p> <p>However, local governments have an incentive <b>not</b> to impose such a tax because another provision in state law prohibits them from sharing in state income tax revenue if they impose a tax on cigarettes: "In order to qualify for distributions of state income tax moneys, units of local government are prohibited from imposing fees, licenses, or taxes on any person as a condition for engaging in the business of selling cigarettes or from attempting in any manner to impose a tax on cigarettes." COLO. REV. STAT. ANN. § 39-28-112</p> <p>Currently, no local governments in Colorado impose a tobacco tax. However, at least some local governments in Colorado had a tobacco tax between the years of 1963 and 1973. See <i>The Tax Burden on Tobacco</i>, p. 265-275 (of the pdf), <a href="http://www.taxadmin.org/assets/docs/Tobacco/papers/tax_burden_2014.pdf">http://www.taxadmin.org/assets/docs/Tobacco/papers/tax_burden_2014.pdf</a>.</p>
Connecticut	Dillon's Rule	No		<p>CONN. GEN. STAT. § 12-330C (2015);</p> <p>CONN. GEN. STAT. §12-296 (2015)</p>	<p>Connecticut is a Dillon's Rule state and as such, must explicitly grant local governments the authority to tax. The state does not appear to have granted this authority in the area of local tobacco excise taxes.</p>
Florida	Home Rule (except taxing authority is reserved for the state)	No	Cigarettes	<p>FLA. STAT. ANN. CONST. ART. 7 § 9 (2015);</p> <p>FLA. STAT. ANN. § 210.011 (2015)</p>	<p>Clear preemption:</p> <p>"It is the intent of the legislature that the surcharge on cigarettes be uniform throughout the state." F.S.A. § 210.011</p>

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Hawaii	Dillon's Rule	No		HAW. REV. STAT. § 237-8.6 (2015); HAW. CONST. art. 8 §3 (2015)	Hawaii is a Dillon's Rule state and, as such, must explicitly grant local governments the authority to tax. The state does not appear to have granted this authority in the area of local tobacco excise taxes.  Note that Hawaii allows local governments to adopt a "general excise tax," which is the state's version of a sales tax. HAW. REV. STAT. § 237-8.6
Illinois	Dillon's Rule (only for certain municipalities)	No (after 1993)	Cigarettes or tobacco products	7 ILL. COMP. STAT. ANN. CONST. 6 (2015); 65 ILL. COMP. STAT. ANN 5/8-11-6A (2015); 35 ILL. COMP. STAT. ANN. 143/10-10 (2015)	Illinois law allowed "home rule" units to adopt cigarette or tobacco taxes until 1993. Home rule units are municipalities with a population of 25,000 or more or a municipality that elects to become a home rule unit by referendum. 7 ILL. COMP. STAT. ANN. 6 "Notwithstanding the foregoing, this Section does not preempt any home rule imposed tax such as . . . (2) a tax based on the number of units of cigarettes or tobacco products (provided, however, that a home rule municipality that has not imposed a tax based on the number of units of cigarettes or tobacco products before July 1, 1993, shall not impose such a tax after that date)." 65 ILL. COMP. STAT. ANN 5/8-11-6A  Four jurisdictions in Illinois currently have a local tobacco tax: Chicago, Cicero, Cook County, Evanston. <a href="https://www.tobaccofreekids.org/research/factsheets/pdf/0304.pdf">https://www.tobaccofreekids.org/research/factsheets/pdf/0304.pdf</a>
Iowa	Home Rule	No	Cigarettes, cigars, other tobacco products	IOWA CODE ANN. § 453A.56 (2015)	Clear preemption: "Enforcement of this chapter [cigarette and tobacco taxes] shall be implemented in an equitable manner throughout the state. For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter." IOWA CODE ANN. § 453A.56
Kansas	Dillon's Rule (only for certain municipalities)	No for cigarettes. Unclear for other tobacco products.	Cigarettes (and other tobacco products?)	KAN. STAT. ANN. 12-142 (2015); KAN. STAT. ANN. 12-194 (2015)	Clear preemption: "No city shall impose a retailers' sales tax, excise tax or tax in the nature of an excise upon the sale of cigarettes as defined by K.S.A. 79-3301 . . . ." KAN. STAT. ANN. 12-142 "Subject to the provisions of subsections (b) and (c), no city or county shall levy or impose an excise tax or a tax in the nature of an excise, other than a retailers' sales tax and a compensating use tax . . ." KAN. STAT. ANN. 12-194

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Louisiana	Dillon's Rule (only for certain municipalities)	Yes, if the revenue supports certain purposes.	Any tobacco product?	LA. STAT. ANN. § 33:1331 (2015)	A state law specifically allows a local (parish) sales tax on cigarette papers. LA. STAT. ANN. § 47:338.261 Additionally, local governments are authorized to adopt excise taxes "for the sole purpose of enabling the municipality, parish or political subdivision to meet its financial obligations under the agreements entered into pursuant to Section 1325." LA. STAT. ANN. § 33:1331 It appears that some local governments in Louisiana had a tobacco tax in place from 1991-1993. See <i>The Tax Burden on Tobacco</i> , p. 293-295 (of the pdf), <a href="http://www.taxadmin.org/assets/docs/Tobacco/papers/tax_burden_2014.pdf">http://www.taxadmin.org/assets/docs/Tobacco/papers/tax_burden_2014.pdf</a> .
Maryland	Dillon's Rule	No	Cigarettes or tobacco products	MD. CODE, TAX – GEN § 12-102 (2015)	Clear preemption: "A county, municipal corporation, special taxing district, or other political subdivision of the State may not impose a tax on cigarettes or other tobacco products." MD. CODE, TAX – GEN § 12-102
Michigan	Dillon's Rule	No	Tobacco products	MICH. COMP. LAWS ANN. § 205.434 (2015)	"Notwithstanding any other provision of law, beginning on the effective date of this act, a city, township, village, county, other local unit of government, or political subdivision of this state shall not impose any new requirement or prohibition pertaining to the sale or licensure of tobacco products for distribution purposes. This section does not invalidate or otherwise restrict a requirement or prohibition described in this section existing on the effective date of this act." MICH. COMP. LAWS ANN. § 205.434
Mississippi	Dillon's Rule	No	Tobacco (includes cigarettes, cigars, chewing tobacco)	MISS. CODE ANN. § 27-69-23 (2015); MISS. CODE ANN. § 27-69-69 (2015)	There is state preemption of local taxes on tobacco products: "The tax imposed by this chapter is in addition to all other privileges, licenses, and any and all other taxes now imposed by law in this state; but nothing in this section shall be construed to permit the taxation by municipalities or boards of supervisors of the privilege taxed by this chapter." MISS. CODE ANN. § 27-69-23  Note that local governments are allowed to impose a "privilege tax" on businesses that sell tobacco products in addition to the permit fee. "Any municipality within this state, in which any business licensed under the provisions of this chapter, may be carried on, shall have the right to impose upon persons engaged in such business, an annual privilege tax of not more than fifty percent (50%) of the permit fee imposed by Section 27-69-7 of this chapter." MISS. CODE ANN. § 27-69-69

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Missouri	Dillon's Rule	No (since 1993)	Cigarettes, tobacco products, alternative nicotine and vapor products	MO. ANN. STAT.§ 149.192 (2015); MO. ANN. STAT.§ 407.926 (2015)	Some local governments in Missouri tax tobacco products, but no new (or increased) taxes are allowed as of 1993. "No county, city, town, village, municipality, or other political subdivision of this state shall adopt any order, ordinance or regulation increasing the tax levied on cigarettes and tobacco products." MO. ANN. STAT.§ 149.192 "Alternative nicotine products and vapor products shall only be sold to persons eighteen years of age or older, shall be subject to local and state sales tax, but shall not be otherwise taxed or regulated as tobacco products." MO. ANN. STAT.§ 407.926
New Mexico	Home Rule	No	Tobacco	N.M. STAT. ANN. 1978 § 3-18-2 (2015)	Clear preemption: State law prohibits municipal "excise taxes on any incident relating to: (a) tobacco . . ." N.M. STAT. ANN. 1978 § 3-18-2
New York	Dillon's Rule	Yes (only for cities with a population of 1 million or more)	Cigarettes and possibly other tobacco products	N.Y. TAX LAW § 1201 (MCKINNEY 2015)	State law provides taxing authority in certain areas for cities of a population of 1 million or more. New York City is the only city in New York State that meets this population requirement and it imposes its own cigarette excise tax.  For more information see: <a href="http://0nulled.com/doc/pdf/a-guide-to-new-york-state-taxes-magikcms.html">http://0nulled.com/doc/pdf/a-guide-to-new-york-state-taxes-magikcms.html</a>
Ohio	Home Rule	Yes (only for counties with a population of 1.2 million or more with a regional arts and cultural district)	Cigarette	OHIO REV. CODE ANN. § 5743.021 (2015)	County cigarette taxes are allowed in Ohio for the special purpose of funding the arts. However, such a tax may be adopted only by a county with a population of 1.2 million or more (according to the 2000 census), which has established a regional arts and cultural district. The only county in Ohio to meet the population requirement is Cuyahoga County, which has a local cigarette tax: <a href="https://www.tobaccofreekids.org/research/factsheets/pdf/0304.pdf">https://www.tobaccofreekids.org/research/factsheets/pdf/0304.pdf</a>
Oklahoma	Dillon's Rule	No	Tobacco products or vapor products	OKLA. STAT. ANN. tit. 37 § 600.10 (2015)	Clear preemption: "No agency or other political subdivision of the state, including, but not limited to, municipalities, counties or any agency thereof, may adopt any order, ordinance, rule or regulation concerning the sale, purchase, distribution, advertising, sampling, promotion, display, possession, licensing or taxation of tobacco products or vapor products . . ." OKLA. STAT. ANN. tit. 37 § 600.10

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Oregon	Home Rule	No	Cigarettes, tobacco products	OR. REV. STAT. § 323.030 (2015); OR. REV. STAT § 323.640 (2015)	Clear preemption: "The taxes imposed by ORS 323.005 to 323.482 are in lieu of all other state, county or municipal taxes on the sale or use of cigarettes." OR. REV. STAT. § 323.030 There is an analogous statute for "tobacco products." OR. REV. STAT § 323.640
Pennsylvania	Dillon's Rule	Yes, for cities with a population of 1 million or more		8 PA. CONS. STAT § 1 (2015); 72 PA. CONS. STAT. § 8206 (2015); 53 PA. CONS. STAT. ANN. § 8722 (2015)	A law adopted in 2014 allows school districts in "first class" cities to adopt a cigarette excise tax of 10 cents per cigarette (\$2 per pack) to fund education. Philadelphia is currently the only first class city in Pennsylvania. It adopted a cigarette tax under this statute: Philadelphia Municipal Code Chapters §19-1807; see also: <a href="http://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/Pages/Cigarette%20Tax/Philadelphia-Cigarette-Tax.aspx#.Vq0DhjY0N0c">http://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/Pages/Cigarette%20Tax/Philadelphia-Cigarette-Tax.aspx#.Vq0DhjY0N0c</a> Philadelphia also imposes a tax on other tobacco products: Philadelphia Municipal Code Chapters 19-3700
Rhode Island	Dillon's Rule	No	All	R.I. CONST. ART. 13 § 5 (2015); R.I. GEN LAWS 44-19-10.1 (2015)	Rhode Island is a Dillon's Rule state and has not granted authority to local governments to tax tobacco products. "Nothing contained in this article shall be deemed to grant to any city or town the power to levy, assess and collect taxes or to borrow money, except as authorized by the general assembly." R.I. CONST. ART. 13 § 5
Virginia	Dillon's Rule	Yes	Cigarettes	VA CODE ANN. § 58.1-3830 (2015)	"No provision of Chapter 10 (§ 58.1-1000 et seq.) of this title shall be construed to deprive counties, cities and towns of the right to levy taxes upon the sale or use of cigarettes, provided such county, city or town had such power prior to January 1, 1977." VA. CODE ANN. § 58.1-3830 Numerous local governments in Virginia currently impose a tax on cigarettes: <a href="https://www.tobaccofreekids.org/research/factsheets/pdf/0267.pdf">https://www.tobaccofreekids.org/research/factsheets/pdf/0267.pdf</a> .
Washington	Dillon's Rule	No	Cigarettes	WASH. REV. CODE. ANN § 82.02.020 (2015)	Clear preemption for cigarettes: "Except only as expressly provided in chapters 67.28, 81.104, and 82.14 RCW, the state preempts the field of imposing retail sales and use taxes and taxes upon . . . cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature." WASH. REV. CODE ANN. § 82.02.020 The preemption statute only mentions cigarettes, not other tobacco products.
West Virginia	Dillon's Rule	No	Cigarettes or other tobacco products	W.VA. CODE. ANN. § 11-17-4A (2015)	Clear preemption: "No municipality or governmental subdivision shall levy any excise or other tax on any tobacco product, or require cigarettes or other tobacco products to be stamped, or require licenses for sale thereof, other than

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					licenses which may be required in accordance with section four, article twelve of this chapter." W. VA. CODE ANN. § 11-17-4A
Wisconsin	Dillon's Rule	No	Cigarettes	WIS. STAT. § 139.43 (2015)	Clear preemption for cigarettes: "Sections 139.30 to 139.44 [re cigarette excise tax] shall be construed as an enactment of statewide concern for the purpose of providing a uniform regulation of the sale of cigarettes." WIS. STAT. ANN. § 139.43 There is no analogous preemption provision regarding other tobacco products. WIS. STAT. CH. 139, SECTION III
Wyoming	Dillon's Rule	No	Cigarettes	WYO. STAT. ANN. § 39-18-103(B) (2015)	Clear preemption for cigarettes: "The state preempts the field of imposing taxes on cigarettes and no city, town or county shall impose, levy or collect taxes upon the sale, occupation or privilege of selling cigarettes." WYO. STAT. ANN. § 39-18-103(B) The preemption provision does not mention other tobacco products.