

State Tax Laws Governing Tribal Tobacco Sales

H DeLong, JD, C Gourdet, JD, MA, C Goodman, JF Chriqui, PhD, MHS, FJ Chaloupka, PhD

Institute for Health Research and Policy, University of Illinois at Chicago

Abstract

Background: Native American tribes are sovereign nations within the United States. As such, their members are exempt from state-level excise taxation, and the tribes themselves have the power to govern on-reservation tobacco sales. This can make collecting taxes owed for tobacco sales to non-Indians difficult for states without formalized relationships/tax agreements.

Objectives: Understand various methods states utilize to administer and enforce taxation of tobacco products on tribal lands.

Methods: Laws were collected for all 50 states plus Washington, D.C. for years 2005-2014. Boolean searches were done in Lexis-Nexis and Westlaw in the following state-level databases: statutes and regulations, case law, Attorney's General opinions, and Dept. of Revenue notices/rulings. Collection was limited to laws addressing taxation compacts (general or tobacco-specific); as well as tobacco sales by/to tribal entities. Non-codified tribal codes/compacts were excluded. All laws were double-coded by two legal researchers for one year to ensure consistency in the analysis. This data represents a preliminary collection of 2012 laws only.

Results: 21 states address tribal compacts and/or tobacco sales. 11 states directly address tobacco tax agreements (including suggested/required provisions). The most common provisions are revenue collection (9), and contract duration (5). Only 5 states limit tax-free tobacco a tribe may receive; 2 states use a coupon system to enforce. Pre-payment of excise tax on all/some products sold on a reservation is required in 11 states.

Implications: Formalizing taxation policies as they relate to non-tax-exempt sales on tribal lands, and the creation of payment systems, including coupons, compacts, and tax collection methods, may assist states in collecting revenue otherwise lost.

Research Questions

1. How many states address on-reservation tobacco/cigarette sales and taxation within their codified laws?
2. How comprehensive are tribal tobacco sales laws at the state level?
3. What mechanisms do states utilize to regulate tobacco sales and minimize evasion on reservation land?

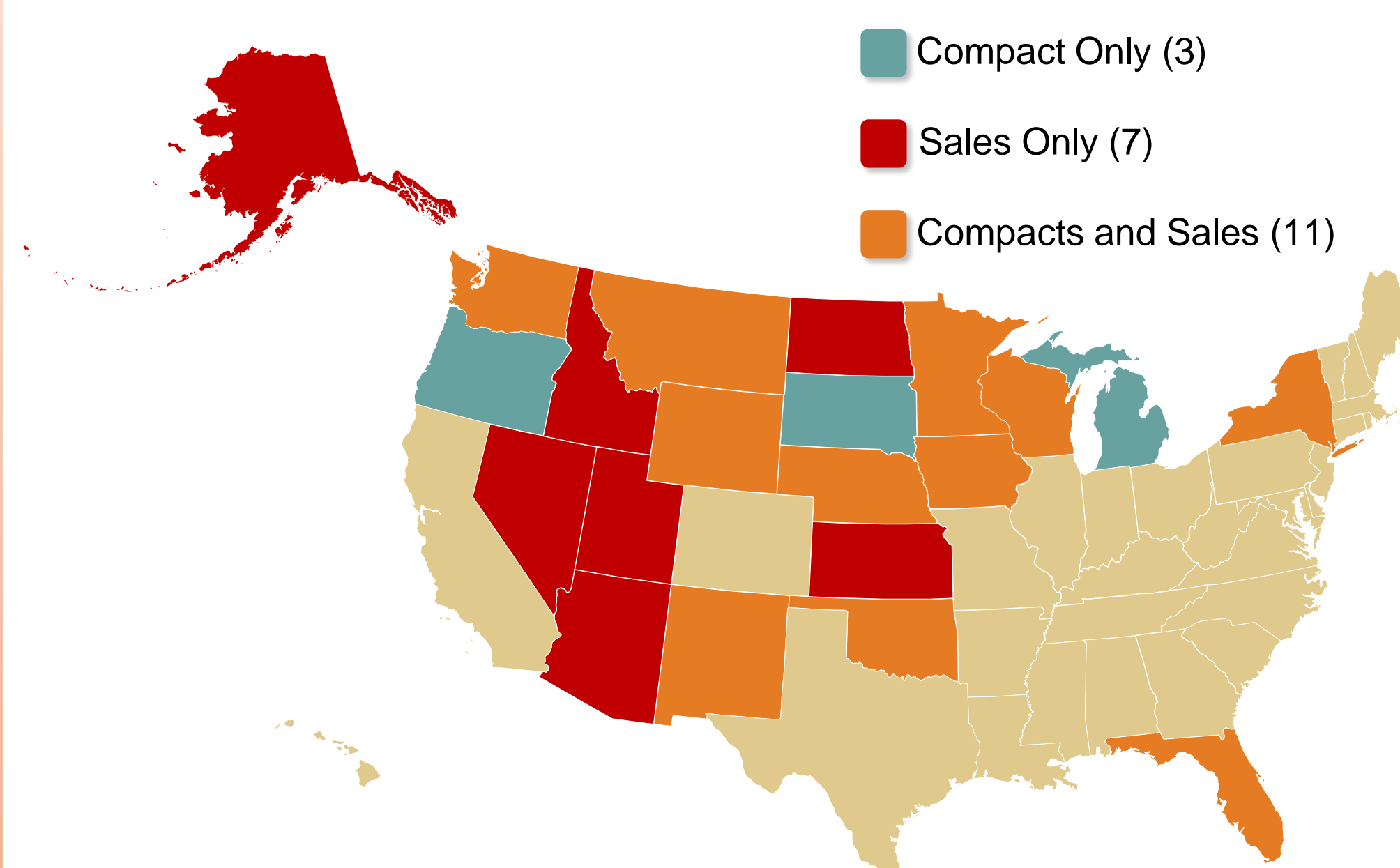
Methods

Laws effective as of January 1, 2005 through 2014 were collected for all 50 states plus Washington, D.C.. Boolean searches were done in Lexis-Nexis and Westlaw in the following state-level databases: statutes and regulations, case law, Attorney's General opinions, and Dept. of Revenue notices/rulings. Collection was limited to laws addressing taxation compacts (general or tobacco-specific); as well as tobacco sales by/to tribal entities. Non-codified tribal codes/compacts were beyond the scope of this study. All laws were double-coded by two legal researchers for one year to ensure consistency in the analysis.

This analysis presents preliminary, double-coded data for the 2012 year.

Results

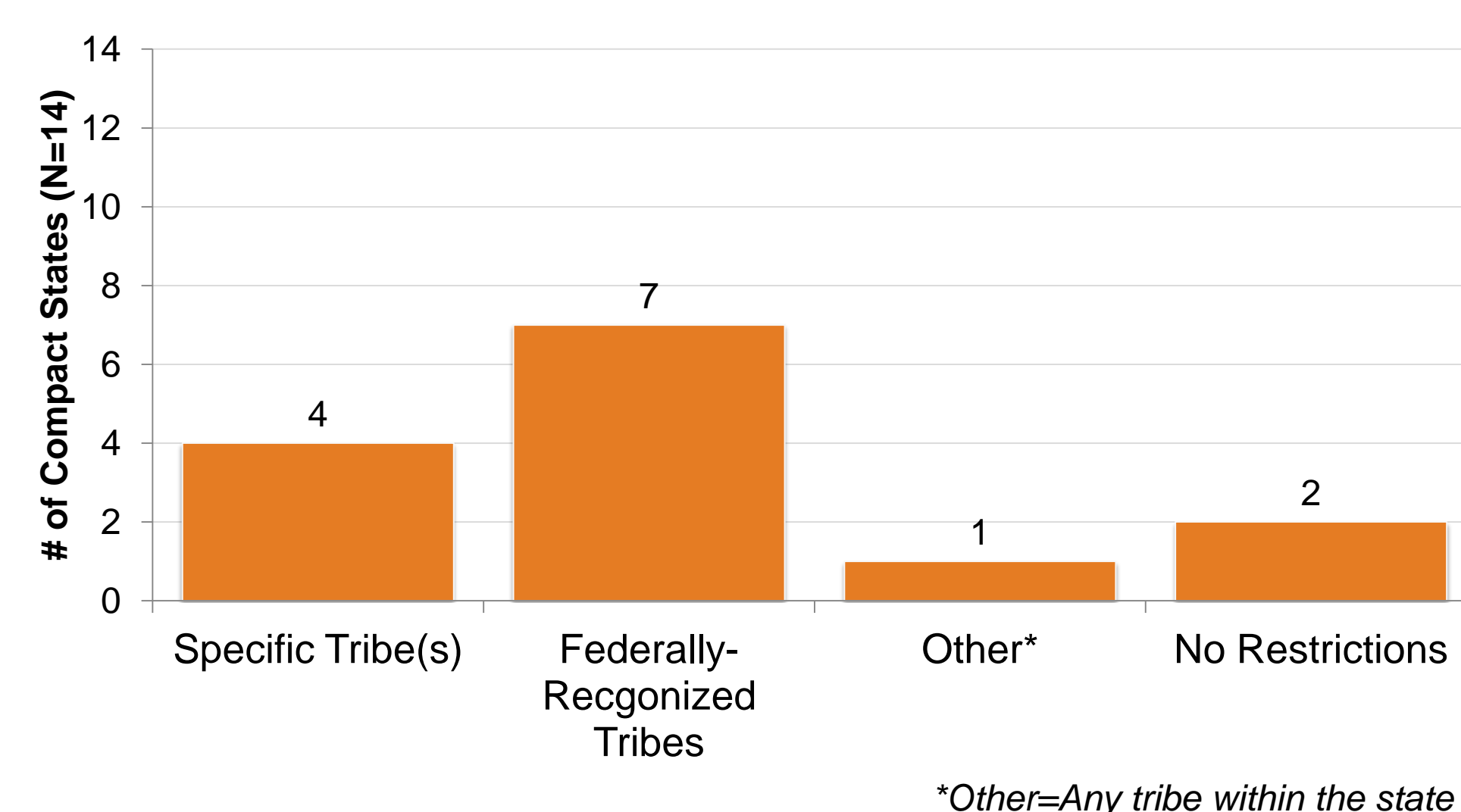
Overview of Tribal Law Types (N=21)



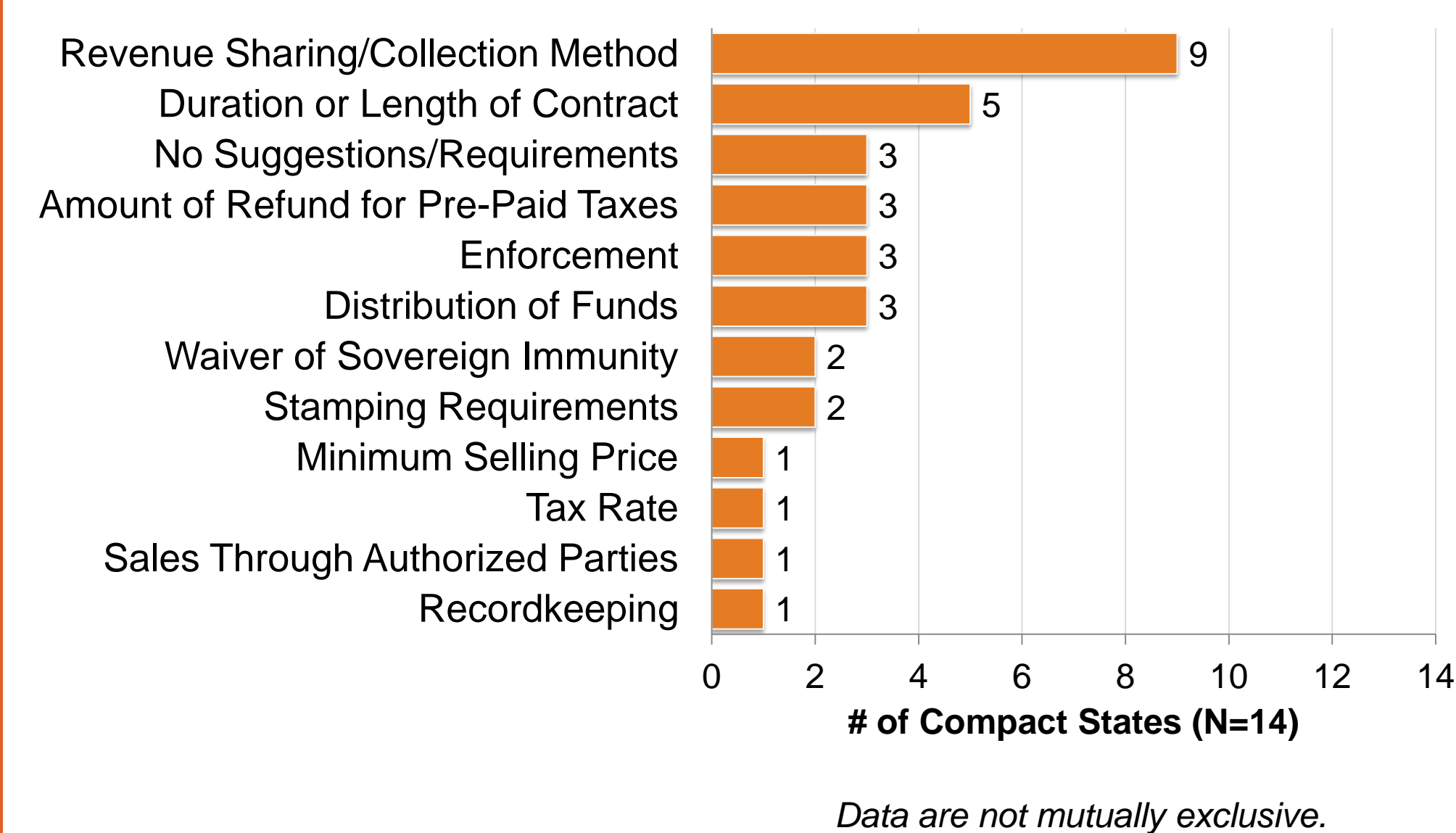
Compacts

- Only 14 of 21 states with tribal laws address compacts. Of those 14 states:
 - 11 states' compact-focused laws are specific to tobacco/cigarettes taxation and sales
 - The remaining 3 states' compact-focused laws relate to taxation, generally, and do not specifically reference tobacco/cigarettes.

With Whom Is A State Authorized to Enter Into a Tax Agreement/Compact?

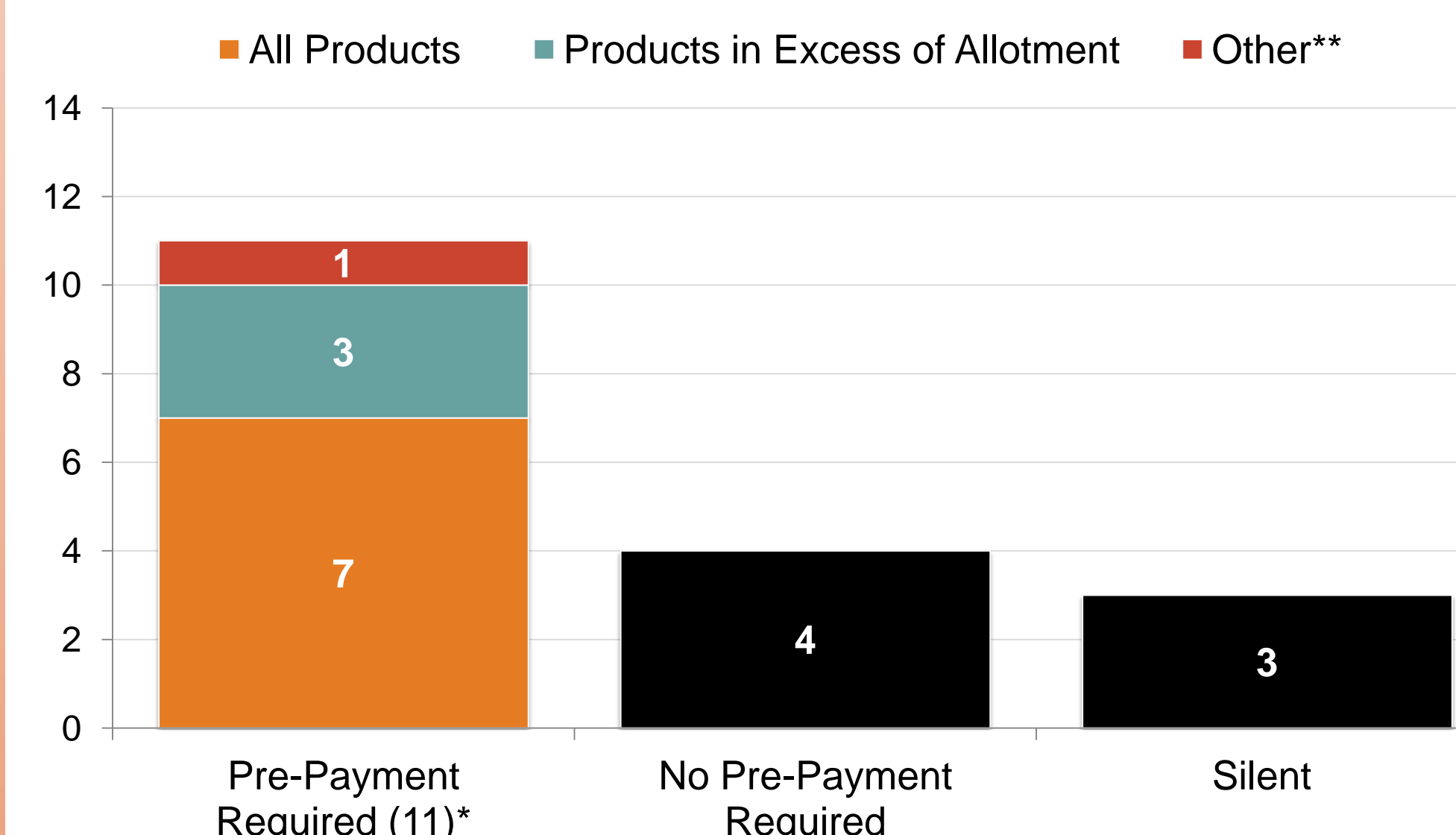


Compact Provisions Suggested or Required by Law



Results

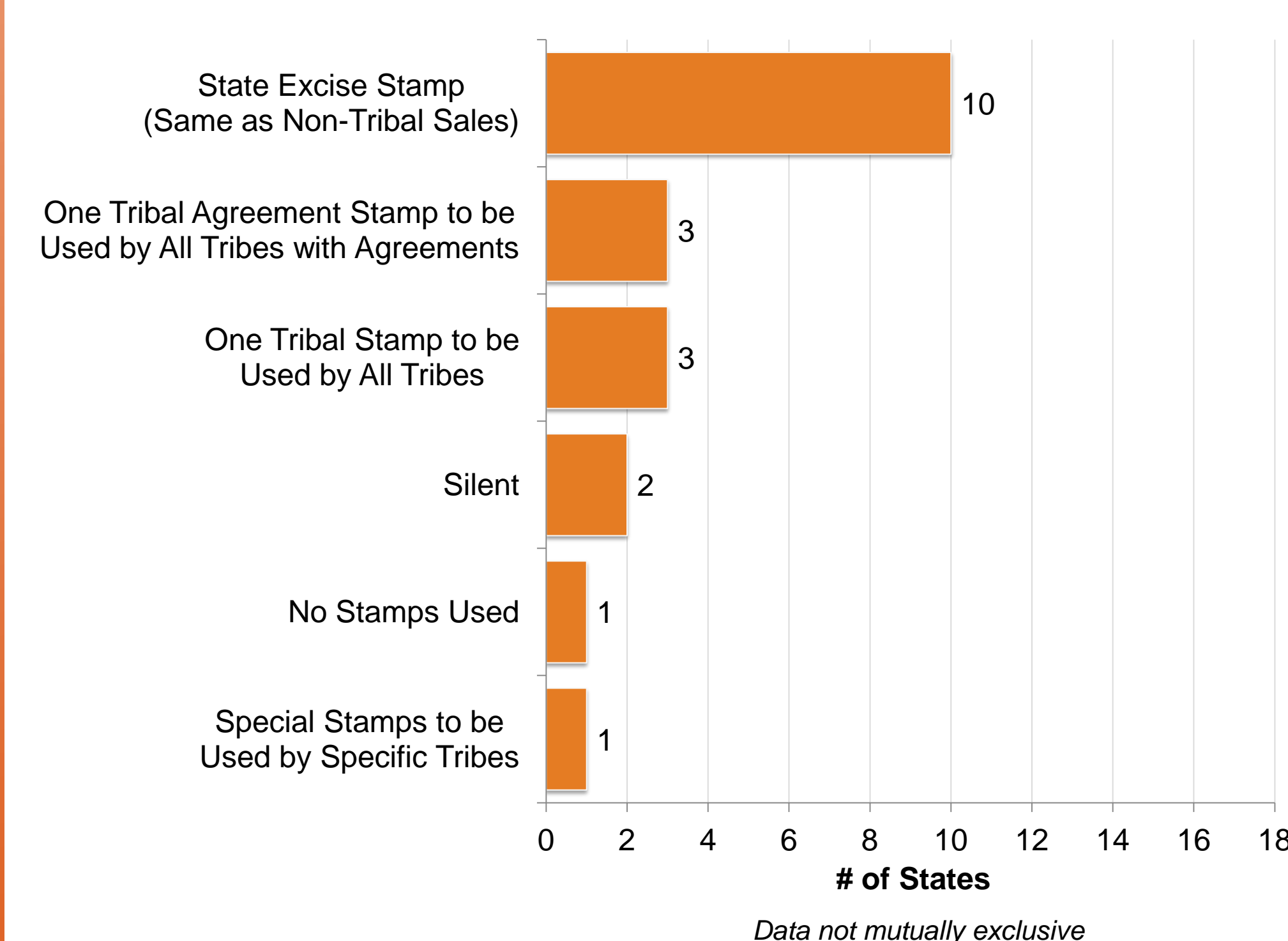
Pre-Payment of Taxes on Cigarettes Purchased by Tribe for Sale On Reservation (N=21)



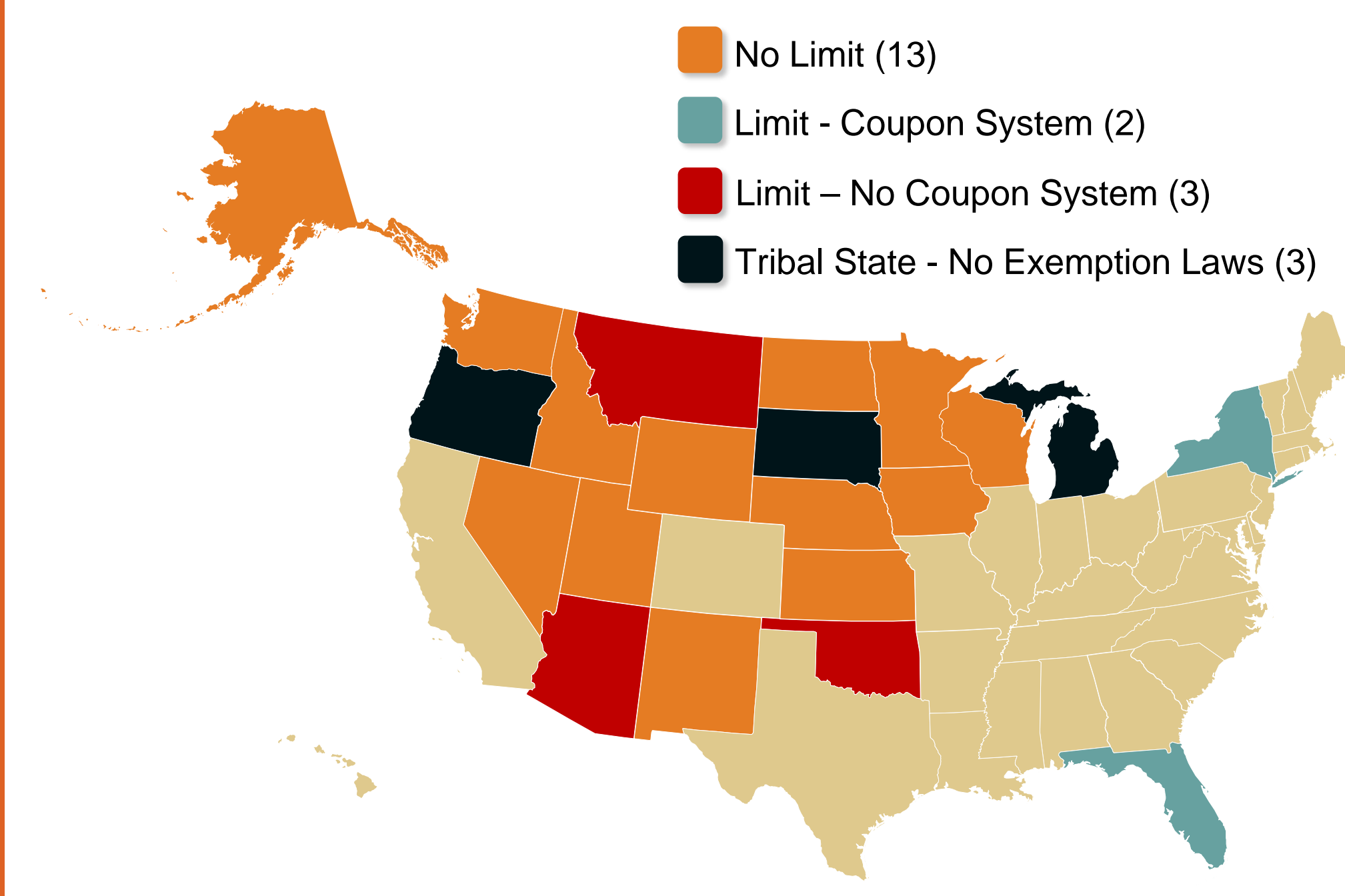
*Eight of the states that require pre-payment explicitly allow for refunds. The remaining three states are silent on refunds.

**Other: All products sold on-reservation by non-Indian retailers.

Types of Stamps Used for Tribal Tobacco Sales

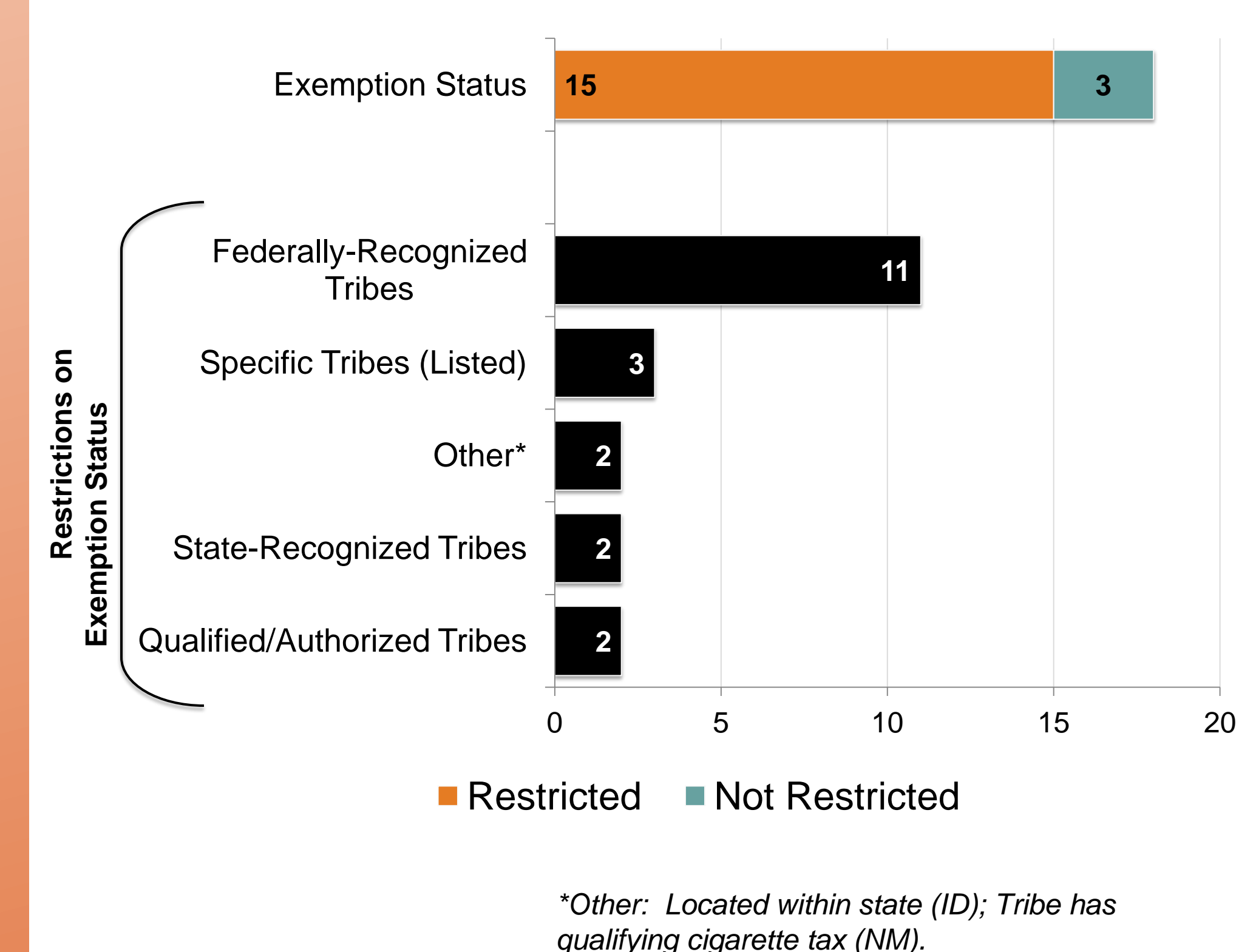


Limits on Amount of Tax-Exempt Tobacco Tribes May Receive (N=21)



Results

Tribal Exemption Status (N=21)



Implications for State and Community Tobacco Control

Formalizing taxation policies as they relate to non-tax-exempt sales on tribal lands, and the creation and utilization of payment systems or mechanisms, including coupons, compacts, and tax pre-payment (with refund schedule), may assist states in collecting revenue otherwise lost. Additionally, states can reduce or eliminate incentives for tax avoidance and evasion and, as a result, increase the effectiveness of state tobacco taxes in reducing tobacco use and its consequences.

Acknowledgments

Funding provided by the National Cancer Institute under the State and Community Tobacco Control Initiative, grant number 5U01CA154248, University of Illinois (PI: Frank J. Chaloupka, PhD).

For more information visit tobacconomics.org