Common Strategies for Regulating Tobacco Sales on Tribal Lands – National Overview, 2015

Introduction

While tribes are exempt from state tobacco taxation, non-tribal members or non-tribal consumers purchasing tobacco on-reservation are not exempt, and must pay state tax on those products. Because of jurisdictional issues, states are unable to regulate on-reservation activity, and must use alternative strategies to collect state taxes owed on those non-exempt sales. Within the tribal states there are four main strategies used to regulate tobacco sales on tribal lands: 1) **tax stamps**, 2) **tax agreements or compacts** between states and tribes, 3) limits or **quotas** on tax-free products, and 4) **pre-payment** of tobacco tax prior to ultimate sale. While each of these strategies can be effective in minimizing state tax revenue loss on its own, combining these strategies can create a comprehensive regulatory framework that targets non-member tax collection both on and off tribal reservations.

This fact sheet documents the use of four key strategies used to regulate on-reservation tobacco taxation and sales policies in tribal states as of January 1, 2015. The presence of key strategies was determined using one scale of four, dichotomous measures. The scale was coded as "not applicable" if a state does not address tribal tobacco sales, and states with no tribal reservations within their borders were identified using secondary data from the Bureau of Indian Affairs. While this fact sheet shows the extent of strategy utilization at a national level, more detailed information on the strategies employed by individual states can be found in a separate fact sheet (See "Tribal State Strategies for Regulating Tobacco Sales on Tribal Lands, 2005 vs. 2015").

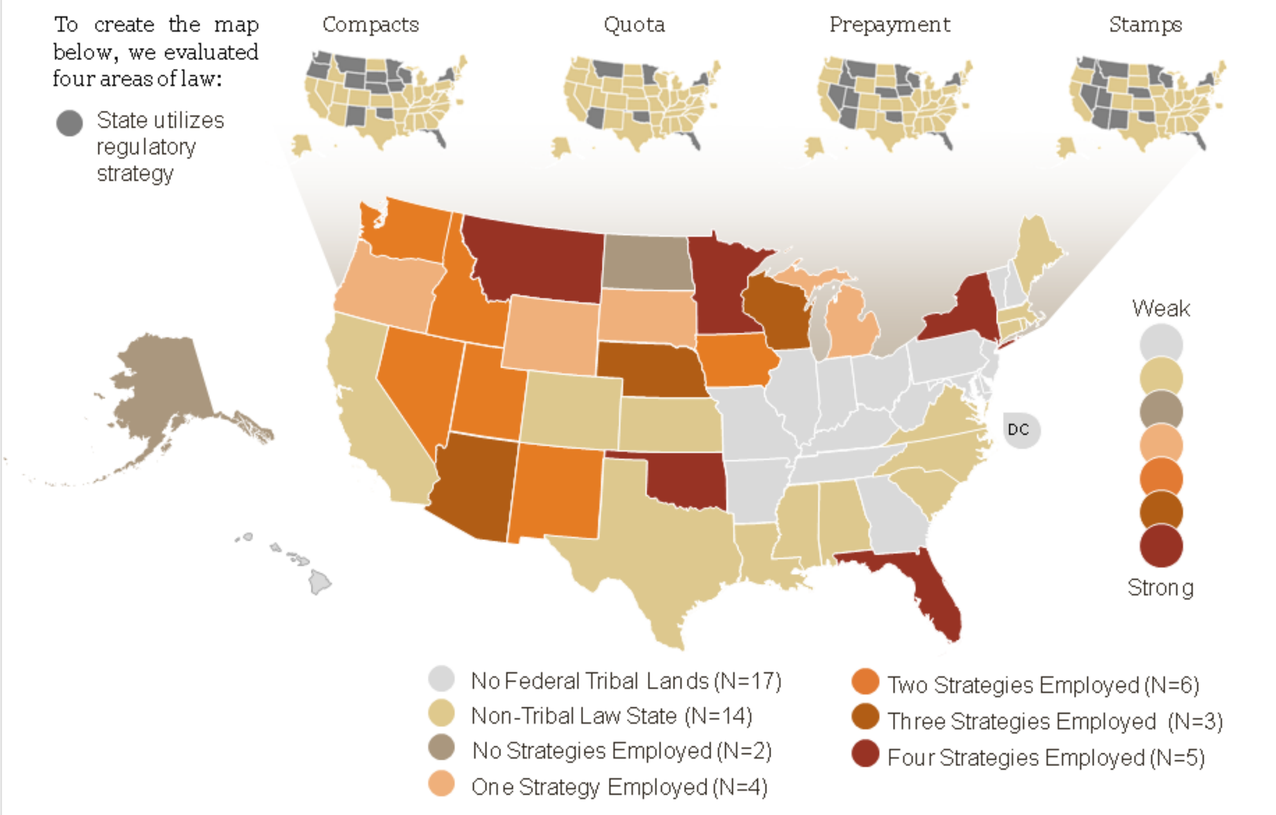
Key Findings

Twenty states addressed on-reservation tribal tobacco sales and/or taxation as of January 1, 2015. Within those states, four key regulatory strategies were used in varying degrees:

- 25% of states used all four key strategies.
- Combining strategies was incredibly common, with 70% of states using two or more strategies.
- Two states (Alaska and South Dakota) do not employ any of the four key strategies.

Twenty states have laws that address the sale or taxation of tobacco sold on tribal lands ("tribal states"). Fourteen additional states have tribal lands within their borders, but no tribal laws addressing tobacco sales or taxation. Of the 20 tribal states, 14 employed two or more identified strategies, with five states utilizing all four major strategies (see Figure 1). Two states (Alaska and North Dakota) do not utilize any of the four key strategies, due, in part, to low on-reservation purchase rates and the isolated locations of reservation lands. Despite the concentration of tribal reservations in the western half of the country, there is no discernible geographic pattern to the states with the most comprehensive regulatory framework (as determined by the use of key strategies) (see Figure 2). However, some states may have been incentivized to create a stronger, more comprehensive tobacco tax strategy due to the size or proximity of tribal reservations to large, urban areas; the number of tribal retailers; or a desire to capture more tax revenue in the face of increasing state tobacco tax.[1]

Figure 2: Common State-Level Tribal Tobacco Taxation Strategies – National Overview, 2015



States without laws addressing tribal tobacco sales, despite a tribal presence within their borders, tend to see relatively low on-reservation tobacco purchases, suggesting that reservation-based tax avoidance or evasion is not a current problem in these states.

A companion chartbook and complete data files listing the tribal tobacco sales laws for tobacco products from January 1, 2005 through January 1, 2015 is available through the Tobacconomics website.

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[1] Chaloupka FJ, Edwards SM, Ross H, et al. Preventing and reducing illicit tobacco trade in the United States. *Centers for Disease Control and Prevention*. 2015.