

Research Protocol for Tobacco Pricing Strategies

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SEPTEMBER 2019

Tobacco Pricing Strategies

I. Date of Protocol: September 2019

II. Scope: Collect, code, and analyze state laws regulating the tobacco pricing strategy relationship. State tobacco pricing strategy laws work to raise or otherwise regulate selling prices for tobacco products, inclusive of cigarettes, other tobacco products, and electronic cigarettes (“e-cigarettes”), by creating tobacco-specific taxes or prohibiting sales below cost.

This cross-sectional dataset captures important features of state tobacco pricing strategy laws in effect as of September 1, 2019 for 50 states and the District of Columbia.

III. Primary Data Collection

a. Project dates: July 2019 – September 2019.

b. Dates Covered in the Dataset: This is a cross-sectional dataset analyzing state tobacco pricing strategy laws effective as of September 1, 2019.

The effective date listed for each state is the date of the most recent version of the law or regulation within that state. If more than one law or regulation is included in the legal text for a state, the effective date reflects the date of the most recently amended or enacted law or regulation within the legal text.

c. Data Collection Methods: The research team (“Team”) consisted of four legal researchers (Researchers) and one supervisor (Supervisor). Westlaw Next and Lexis Advance were used to identify which states had tobacco pricing strategy laws in effect as of September 1, 2019. Secondary sources, including the Public Health Law Center: Tobacco Control Legal Consortium (TCLC) and Tobacconomics, University of Illinois at Chicago, Institute for Health Research and Policy, as well as a subject matter expert from the Philadelphia Health Department, Ryan Coffman, Director of Tobacco Policy and Control, were consulted to assist with defining the scope of the laws included in this dataset.

d. Databases Used: Research was conducted using Westlaw Next and Lexis Advance, state-specific legislature websites, and secondary sources such as TCLC and tobacconomics.org.

- i.** Full text versions of the laws collected were collected from each respective state legislature website.

e. Search Terms:

- i.** Keyword searches:
 - 1.** “tobacco”

2. “cigarette”
 3. “electronic smoking device”
 4. “vapor product!”
 5. “below cost”
 - ii. Search strings:
 1. “tobacco /50 ‘below cost’”
 2. “cigarette /50 ‘smoking cost’”
 - iii. Key word searches were supplemented by reviewing the table of contents in state taxation and commerce chapters.
 - iv. Once all the relevant statutes and regulations were identified for a jurisdiction, a Master Sheet was created for each jurisdiction. The Master Sheet for each jurisdiction includes the most recent statutory history for each statute and regulation. The most recent effective dates, or the date when a version of law or regulation becomes enforceable, are recorded for each relevant statute and regulation.
 - v. All 51 jurisdictions were 100% independently, redundantly researched to confirm that all relevant law was collected by the Researchers.
 - vi. Divergences, or differences between the original research and redundant research, were reviewed by the Supervisor and resolved by the Team.
- f. **Initial Returns and Additional Inclusion or Exclusion Criteria:** Included laws pertaining to state-level tobacco pricing strategy laws.
 - i. The following variables were included in the state tobacco pricing strategy dataset:
 1. State laws regarding cigarette taxation
 2. State laws regarding taxation of other tobacco products
 3. State laws regarding e-cigarette taxation
 4. State preemption of local tobacco taxation
 5. Minimum pricing requirements for tobacco
 6. Prohibitions on tobacco sales below cost
 7. Regulation of combination sales
 - ii. The following variables were excluded in the state tobacco pricing strategy dataset:
 1. Privilege taxes on retailing parties
 2. Floor taxes on retailing parties
 3. Regulations specific to tobacco vending machines
 4. Parties statutorily exempt from taxation
 5. Revenue streams outside of the selected categories
 6. Administration of tax refunds
 7. Federal tobacco taxation

IV. Coding

- a. **Development of Coding Scheme:** The Team conceptualized coding questions, and then circulated them to a subject matter expert for review. When the questions were finalized, the Team entered them into MonQcle, a web-based software-coding platform. The team then used the collected law built on MonQcle to answer the developed question set.
- b. **Coding Methods:** Researchers coded responses based on objective, measurable aspects of the law. Caution Notes were provided to explain any unique regulations and/or where the law was unclear.

Below are specific rules used when coding the questions and responses in the state tobacco pricing strategy laws dataset. Not every dataset question is included in the section below. Only questions and responses that required an explanation of the legal text used to code are listed.

- **Question: “What type of tax is applied?”**
 - “Use tax” was coded where a state imposed an additional tax on a party in possession of cigarettes on which the state’s cigarette excise tax had not otherwise been paid.
 - “Additional sales tax” was coded where a cigarette specific tax was imposed whose rate was dependent on the cost of the cigarette’s retail cost.
- **Question: “Does the state law ultimately pass the tax on to the consumer?”**
 - “Yes” was coded when there was a specific provision within the law that stated that the wholesale or retail party was merely pre-collecting the tax, and that the ultimate cost must be passed on to the consumer.
- **Question: “What is the total amount of the tax?”**
 - The total amount was calculated per “pack” of 20-cigarettes in dollars. If the tax rate was given per cigarette, that amount was adjusted accordingly.
 - Where the excise tax was set in mills per cigarette, total cost was reached by dividing mill value by a thousand, and multiplying by twenty. Where excise tax was set in cents per cigarette, total cost was reached by multiplying cent value by twenty. Any additive rates across different sections of law were added together.
 - The total amounts provided do not represent special circumstances where a triggering event was required to occur before an additional tax rate was imposed.
 - Where cigarette taxes varied by length or overall size of cigarette, the smallest size was coded.
- **Question: “Which state fund receives the tax?”**
 - Where tax revenue was allocated on a mandatory basis to a fund, that fund was coded regardless of what percentage of revenue was allocated.
 - Not all potential fund streams were captured in the responses; the potential responses were selected through background research and discussion with subject matter experts.

- “Health fund” was coded where revenue was allocated for mental health care, general health care, including Medicaid, hospital support and administration, or drug treatment programs.
- “Education fund” was coded where revenue was allocated for public school districts, university programs or endowments, or early childhood development programs.
- “Tobacco specific fund” was coded where revenue was allocated for programs specifically aimed at encouraging tobacco use cessation.
- “Administrative Costs” was coded where revenue was allocated for administrating the cigarette tax, inclusive of enforcement costs.
- “Local jurisdiction” was coded where the revenue was allocated to local counties or municipalities within the state.
- **Question: “What other tobacco products are taxed at a distinct rate?”**
 - “All other tobacco products taxed at same rate” was coded where non-cigarette tobacco products were taxed at a single rate, with no differentiation between different types of tobacco products.
 - “Smoking tobacco” was coded where states made explicit mention to pipe tobacco, roll-your-own tobacco, or smoking tobacco.
 - “Snus” was coded where there was reference to new smokeless tobacco.
 - If a general type of tobacco product e.g. smokeless tobacco was taxed distinctly, the tobacco products defined by that general type were each coded.
- **Question: “Does the state explicitly tax electronic cigarettes?”**
 - “Yes” was coded if distinct tax rates for electronic cigarettes were promulgated or if electronic cigarettes were specifically mentioned in the definition of tobacco products.
- **Question: “What type of tax is levied?”**
 - “Tax is levied by wholesale on the electronic cigarette” was coded where such a tax was applied to an e-cigarette device or where the same was applied to e-cigarette liquid.
- **Question: “Does the state preempt the local taxation of tobacco?”**
 - “No” was coded where statutory law was silent on explicit preemption unless specific case law existed within the state preempting the local taxation on tobacco products.
 - Both “yes, cigarettes” and “yes, non-cigarette tobacco products” were coded where explicit preemption present was a general preemption against local taxation.
- **Question: “Does the state set minimum prices for tobacco?”**
 - Both “Yes, cigarettes” and “Yes, non-cigarette tobacco products” were coded where the state provided a defined equation of cost, and did not require the state to actually set a specific numerical value.
 - Both “Yes, cigarettes” and “Yes, non-cigarette tobacco products” were coded where a state provided a definition for cost that encompassed retail goods generally.
- **Question: “Does the state prohibit selling tobacco for less than cost?”**

- Both “Yes, cigarettes” and “Yes, non-cigarette tobacco products” were coded where a state set a general prohibition against selling goods below cost.
- **Question: “Does the state regulate combination sales for tobacco?”**
 - Both “Yes, cigarettes” and “Yes, non-cigarette tobacco products” were coded where a state provided general regulation on combination sales of all retail goods.

V. **Quality Control**

a. **Quality Control – Background Research:** All 51 jurisdictions were 100% redundantly researched to confirm that all relevant laws were collected by the Researchers. The Researchers also consulted secondary sources (TCLC and tobacconomic.org) to verify whether states had state-level tobacco pricing strategy laws within the scope of the dataset.

- i. The research showed that all 51 jurisdictions tax tobacco products.
- ii. The research showed that many states utilized other pricing strategies regarding tobacco products.

b. **Quality Control – Coding**

- i. **Original Coding:** Quality control of the original coding consisted of the Supervisor exporting the data into a Microsoft Excel document each day the Researchers completed coding to examine the data for any missing entries, citations, and caution notes.
- ii. **Redundant coding:** The redundant coding process is 100% independent, redundant coding by two Researchers of each jurisdiction. Redundant coding means that each jurisdiction (a record) is assigned and coded independently by the two Researchers. Divergences, or differences between the original coding and redundant coding, are resolved through consultation and discussion with subject matter experts and the Team.

Quality control of the redundant coding consisted of the Supervisor exporting the data into a Microsoft Excel document each day the Researchers completed redundant coding to calculate divergence rates.

100% of the records were redundantly coded throughout the life of the project.

After coding the first 10 jurisdictions (Batch 1), the rate of divergence was 19% on October 7, 2019. A coding review meeting was held and all divergences were resolved. Questions that were causing confusion were edited for clarity and then checked across the dataset to make sure coding was consistent. The Supervisor assigned the next 20 jurisdictions (Batch 2) for 100% redundant coding and the rate of divergence dropped to 10.5% on November 12, 2019. Again, a coding review meeting was held and all divergences were resolved. The Supervisor then assigned 100% redundant coding of the next 21 jurisdictions (Batch 3) and the divergence rate was 11% on November 13, 2019. Divergences were again resolved through consultation and discussion with the Team.

- iii. Post-production Statistical Quality Control:** To ensure reliability of the data, a statistical quality control procedure (SQC) is run once all of the original and redundant coding is finished. To conduct SQC, the Supervisor takes a random sample of variables from the dataset for the Researchers to independently code. SQC occurs until divergences are below 5%. The Supervisor ran SQC after the dataset was completed on November 14, 2019. At that time, the divergence rate was 4.54%. Each divergence was then reviewed as a team and resolved. These divergences were reviewed and resolved as a Team.
- iv. Final Data Check:** Once all of the coding and quality control was completed, the Researchers checked the final coding results against secondary sources. The secondary sources used for comparison were the Public Health Law Center: Tobacco Control Legal Consortium (TCLC) and Tobacconomics, University of Illinois at Chicago, Institute for Health Research and Policy. Prior to publication, the Supervisor downloaded all coding data into Microsoft Excel to do a final review of coding answers, statutory and regulatory citations, and caution notes. All unnecessary caution notes were deleted and all necessary Caution Motes were edited for publication.