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March 12, 2015

Chairman Mark Hass  
Vice-Chair Brian Boquist  
Senator Herman Baertschiger, Jr.  
Senator Chris Edwards  
Senator Chuck Riley

Dear Chairman Hass, Vice-Chair Boquist, Committee Members:

Plaid Pantries, Inc. owns and operates 108 convenience stores with 750 employees, mostly in the tri-county Portland Metro area. Please see Exhibit 1 for details of Plaid's contributions to the State's economy. Plaid is also a member of the Oregon Neighborhood Store Association (ONSA), which provides legislative and regulatory representation for Oregon's 2,500 smaller, mostly family-owned and operated convenience food stores.

Plaid and ONSA strongly oppose Senate Bill 14, which changes Oregon's current law prohibiting counties and other municipalities from imposing a tobacco tax in addition to the Federal and State excise taxes. Such a measure would not only be devastating for Oregon small businesses, but also very bad for State finances, the Oregon Health Plan, and it will kill jobs and hurt the economy.

As you are well aware, tobacco is already a declining and very fragile source of revenue. Please refer to Exhibit 2 for an illustration of Oregon and Washington taxable cigarette carton history. Exhibit 3 shows the corresponding State and Federal excise tax rates for the same years. Included in the graphs are estimates for the current fiscal year, and a projection for FY 2016 modeling a \$1 per pack local cigarette tax. The result is Oregon's taxable cigarette carton sales will be driven down to only 112 million packs, compared to last year's 162 million packs; a loss of 50 million taxable packs. This dramatic reduction is the result of three factors: a significant reduction in Washington cross-border shopping, an increase in Oregon tobacco users moving to black/gray-market product, and the underlying decrease in cigarette usage.

At the 2016 Oregon excise tax rate of \$1.32 per pack, this represents a reduction in state cigarette tax revenue of \$66 million. More significantly, in the \$1 per pack example, Oregon would be forever relinquishing \$112 million in potential future state tax revenue from cigarettes. County and City tobacco taxes represent future revenue capacity lost by the State.

Future state excise tax increases would be on top of local taxes, with an ever-increasing effect on driving more taxable tobacco sales to non-taxed black market product, as is so prevalent in Washington State and New York. These numbers are not counting Other Tobacco Products which will also likely be heavily taxed. Lower taxed unit volumes will negatively impact MSA payments as well.

When combined new city and county taxes reach only \$1.36 per pack, taxable sales will be driven down to 99 million packs, with a loss to the State of \$83 million. But the real significance of this level of taxes is that additional tax increases above this amount will actually result in less revenue. This is the point at which the much higher existing taxes on additional lost pack sales exceed the new incremental tax rate on remaining pack sales. In other words, the State cannot simply raise the tax rate more in an attempt to recover the \$83 million lost revenue; revenue losses will increase.

Every dollar raised by local governments would be new-found money, with no responsibility for any effects on the State's finances, the Oregon Health Plan, Oregon small businesses, or Oregon's overall economy and jobs. It therefore is important to recognize there will be a strong incentive for local governments to tax at higher rates versus taking a more moderate approach.

This issue is not just about whether the State should relinquish dwindling tobacco revenue to local governments. The much bigger question is whether the State should risk losing control of a \$332 million annual revenue stream for the State; \$201 million in state cigarette taxes, \$74 million in Master Settlement Agreement payments, and \$57 million in state tax on Other Tobacco Products. Local tobacco taxes will drive consumers to readily available sources of untaxed tobacco products, placing funding for statewide programs in serious jeopardy.

Tax avoidance and outright evasion is already high; Oregon is currently at 10.8%, and Washington is at 46.4% (Exhibit 4). New York State has the highest tobacco tax in the nation at \$4.35 per pack, and they are experiencing a 58% smuggling rate. There are plenty of illegal entrepreneurs to meet the increased demand when taxes on tobacco are increased, regardless of the source of the taxing authority.

In addition to negative consequences for the State's finances, the example \$1 per pack tax increase will drive over \$400 million in currently taxed tobacco sales and related non-tobacco items sold by legitimate retailers into the illegal black market. This would wipe out \$78 million in private business funding of wholesale and retail jobs as well as employee benefits. When sales go down, employers have no choice but to adjust labor staffing, which means fewer work hours, fewer employees, and reduced benefits. At the margin, many stores will have to close. There is an additional economic "multiplier effect" as well. For example, our company does business with over 300 companies, mostly Oregon small businesses, which rely on us to pay them for products, services, repairs, and maintenance. Allowing local tobacco taxes would

easily wipe out much more in state funding and beneficial private economic activity than the amount that would be raised by municipalities.

There are other problems with increasing tobacco taxes. Such taxes are regressive and selective. We should not single out a minority of the population that is already heavily taxed, and double their tax on any product. The burden of increased taxes should be shared fairly, with smaller new taxes on everyone, holding to Oregon's established principle that taxes be progressive, not regressive. Our customers are mostly working citizens, they do not have high incomes, and have bills to pay like everyone else.

County and city taxes would create winners and losers. With a patchwork of various different taxes we would have a logistical and an enforcement nightmare. Law-abiding consumers lose. Law-abiding small businesses lose, especially those just inside the borders of a very high-tax municipality. Workers lose... fewer hours worked, many jobs eliminated, and benefits and health insurance are reduced or lost. It is also counterproductive to sacrifice significant funding of the Oregon Health Plan and lose the new revenue from the most recent tax increase for mental-health funding.

Allowing counties to tax tobacco is not an equitable means of allocating a statewide resource, particularly in the case of counties that border Washington State. Exhibit 5 is an example of a \$1 county tax in each county, divided by each county's population. Tax revenues from Washington consumers, or other factors causing above average purchases in the various counties or cities, should not remain in those municipalities simply due to the luck of geography or other special circumstances.

There is a much better solution. The State should keep control as the sole taxing authority on tobacco, and increase the revenue allocation to the municipalities, if the Legislature finds this appropriate. Only you can keep the appropriate balance among all other competing needs for these declining dollars, as well as consider the adverse impacts on small businesses and Oregon's overall economy.

We strongly urge you not to relinquish the State's sole authority to tax tobacco products.

Respectfully submitted,



Chris Girard  
CEO, Plaid Pantries, Inc.  
Chairman, Oregon Neighborhood Store Association

*Exhibits 1-5*

**Plaid Pantries, Inc.:**

**An Oregon Business,**

**An Oregon Employer,**

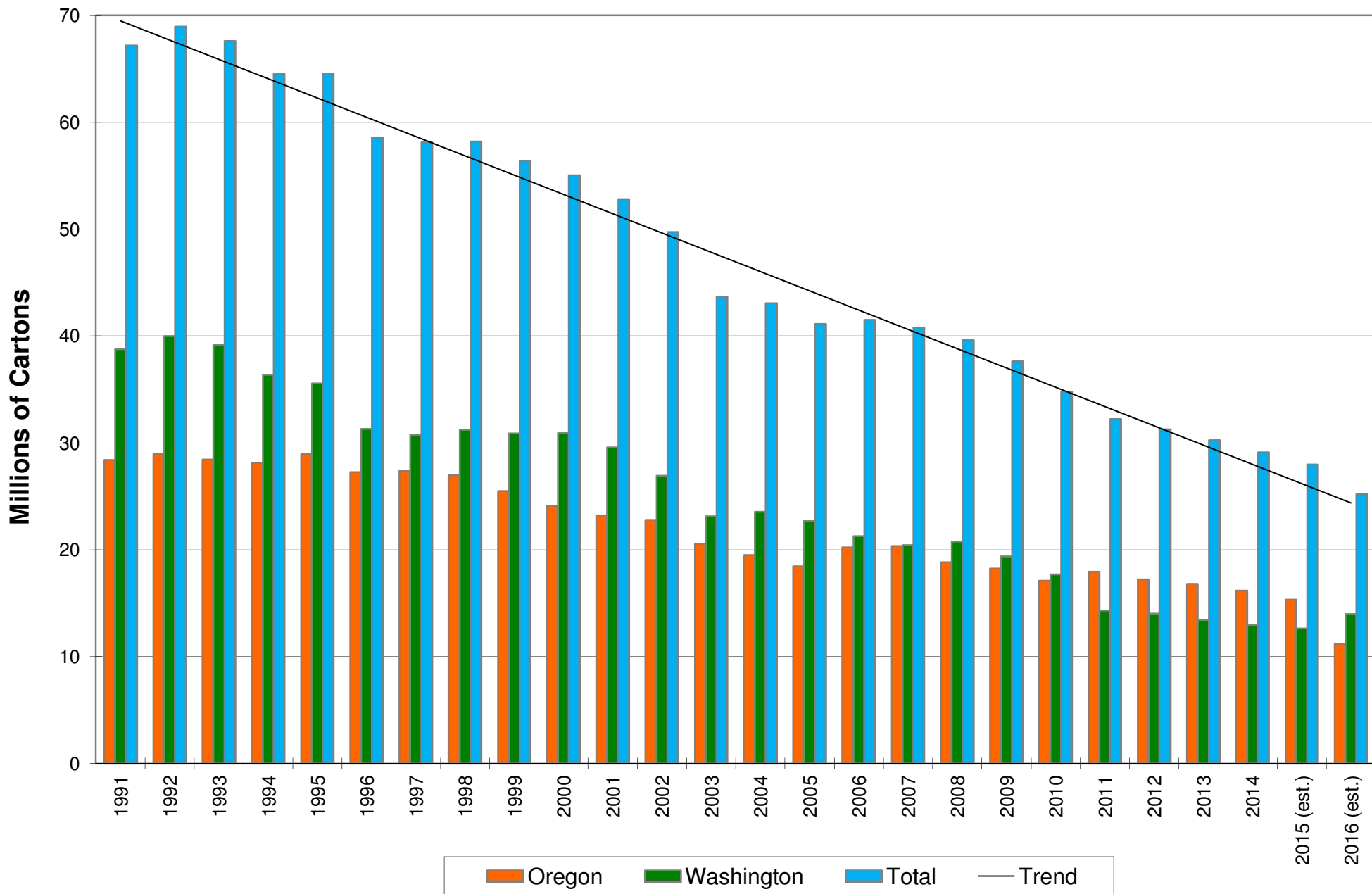
**Contributing to Oregon's Economy**

Locations in Oregon & Washington	110
Number of Employees	800
Customers per Day	70,000+
Annual Sales	\$203,000,000
Number of Supplier/Trade Companies	300+

**Contributions to The Northwest's Economy in 2014**

Employee Payroll	20,600,000
Payroll Taxes, Unemployment, 401k match, Tuition Reimbursement, Worker's Compensation & Social Security Contributions	2,400,000
Employee Health Insurance Contributions (by Plaid Pantry)	2,300,000
Rent Payments to Landlords	6,100,000
Property Taxes and Income Taxes	2,700,000
Services purchased including repairs, banking, insurance, legal and accounting	4,100,000
<b>TOTAL</b>	<b>----- \$38,200,000</b>

# Taxed Cigarette Cartons



### Cigarette Excise Tax Rate per Carton



# Cigarette Taxes and Cigarette Smuggling by State, 2013

By Scott Drenkard & Joseph Henchman

Economist & Manager  
of State Projects

Vice President, Legal  
& State Projects

## Key Findings

- Large differentials in cigarette taxes across states create incentives for black market sales.
- Smuggled cigarettes make up substantial portions of cigarette consumption in many states, and greater than 20 percent of consumption in fifteen states.
- The highest inbound cigarette smuggling rates are in New York (58.0 percent), Arizona (49.3 percent), Washington (46.4 percent), New Mexico (46.1 percent), and Rhode Island (32.0 percent).
- The highest outbound smuggling rates are in New Hampshire (28.6 percent), Idaho (24.2 percent), Virginia (22.6 percent), Delaware (22.6 percent), and Wyoming (21.0 percent).
- Smuggling rates jumped substantially in Illinois after hikes in state and county excise tax rates, from 1.1 percent of consumption in the last edition to 20.9 percent in this edition.
- Cigarette tax rates increased in 30 states and the District of Columbia between 2006 and 2013.

Public policies often have unintended consequences that outweigh their benefits. One consequence of high state cigarette tax rates has been increased smuggling as criminals procure discounted packs from low-tax states to sell in high-tax states. Growing cigarette tax differentials have made cigarette smuggling both a national problem and a lucrative criminal enterprise.

Each year, scholars at the Mackinac Center for Public Policy, a Michigan think tank, use a statistical analysis of available data to estimate smuggling rates for each state.<sup>1</sup> Their most recent report uses 2013 data and finds that smuggling rates generally rise in states after they adopt large cigarette tax increases. Smuggling rates have dropped in some states, however, often where neighboring states have higher cigarette tax rates. Table 1 shows the data for each state, comparing 2013 and 2006 smuggling rates and tax changes.

New York is the highest net importer of smuggled cigarettes, totaling 58.0 percent of the total cigarette market in the state. New York also has the highest state cigarette tax (\$4.35 per pack), not counting the additional local New York City cigarette tax (an additional \$1.50 per pack). Smuggling in New York has risen sharply since 2006 (+62 percent), as has the tax rate (+190 percent).

Smuggling in Illinois has also increased dramatically, from 1.1 percent to 20.9 percent since the last data release. This is likely related to the fact that the Illinois state cigarette tax rate was hiked from \$0.98 to \$1.98 in mid-2012. This increase in smuggling may continue in future data editions, as more recent increases in both the Cook County rate (from \$2.00 to \$3.00 per pack, effective March 1, 2013) and the Chicago municipal rate (from \$0.68 to \$1.18, effective January 10, 2014) have brought the combined state-county-municipal rate in the city of Chicago to \$6.16 per pack of cigarettes, the highest combined rate in the country.<sup>2</sup>

Other peer-reviewed studies provide support for these findings.<sup>3</sup> Recently, a study in Tobacco Control examined littered packs of cigarettes in five northeast cities, finding that 58.7 percent of packs did not have proper local stamps. The authors estimated 30.5 to 42.1 percent of packs were trafficked.<sup>4</sup>

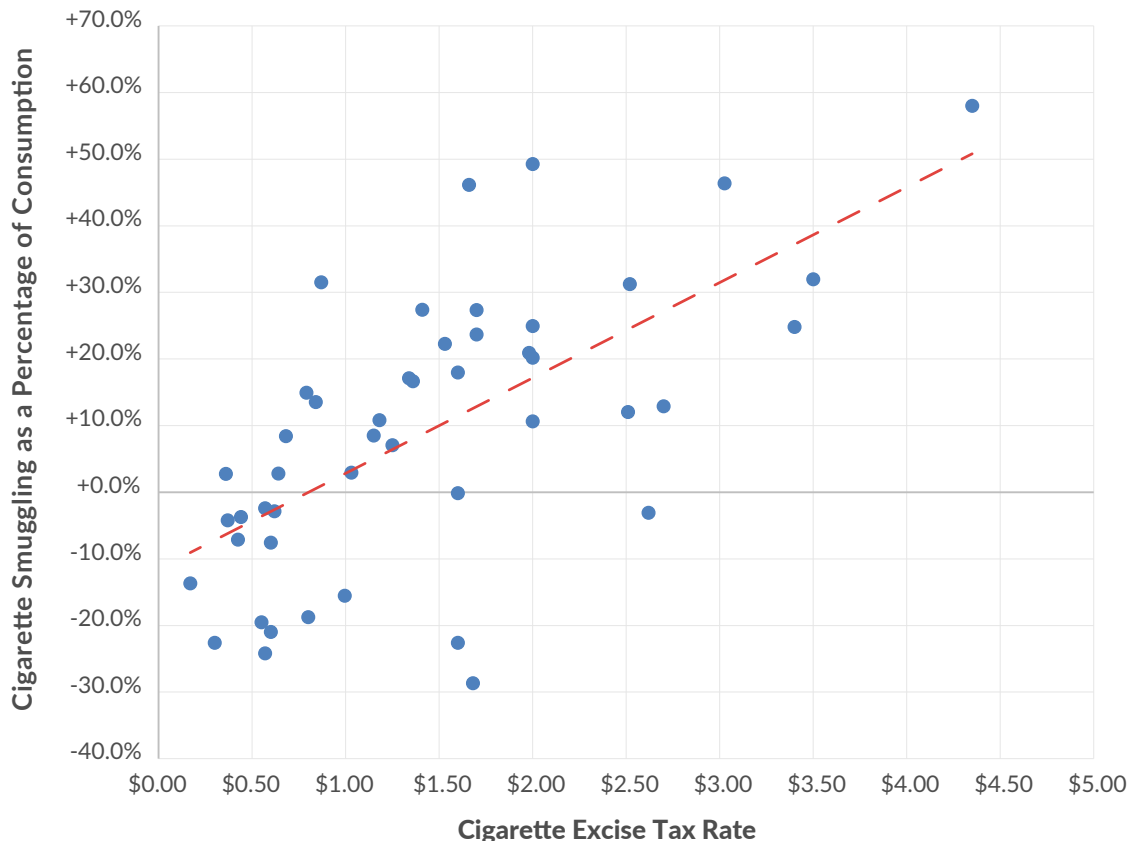
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- 1 See, e.g., Mackinac Center for Public Policy, Michael LaFaive, Todd Nesbit, & Scott Drenkard, *Cigarette Smugglers Still Love New York and Michigan, but Illinois Closing In* (Feb. 2015), <http://www.mackinac.org/20900>; Mackinac Center for Public Policy, Michael LaFaive, & Todd Nesbit, *Cigarette Smuggling Still Rampant in Michigan*, *Nation* (Feb. 2014), <http://www.mackinac.org/19725>; Mackinac Center for Public Policy, Michael LaFaive, & Todd Nesbit, *Higher Cigarette Taxes Create Lucrative, Dangerous Black Market* (Jan. 2013), <http://www.mackinac.org/18128>; Mackinac Center for Public Policy, Michael LaFaive, *Cigarette Taxes and Smuggling 2010: An Update of Earlier Research* (Dec. 2010), <http://www.mackinac.org/14210>; Mackinac Center for Public Policy, Michael LaFaive, Patrick Fleenor, & Todd Nesbit, *Cigarette Taxes and Smuggling: A Statistical Analysis and Historical Review* (Dec. 2008), <http://www.mackinac.org/10005>.
  - 2 The Civic Federation, *Higher Tax Rates in Effect for Chicago Tobacco Consumers* (Jan. 2014), <http://www.civicfed.org/civic-federation/blog/higher-tax-rates-effect-chicago-tobacco-consumers>.
  - 3 See, e.g., Michael F. Lovenheim, *How Far to the Border?: The Extent and Impact of Cross-Border Casual Cigarette Smuggling*, *National Tax Journal*, Vol. LXI, No. 1, (March 2008), [http://ntj.tax.org/wwtax/ntjrec.nsf/BF515771548F9D538525742E006CCBBA/\\$FILE/Article%2001-Lovenheim.pdf](http://ntj.tax.org/wwtax/ntjrec.nsf/BF515771548F9D538525742E006CCBBA/$FILE/Article%2001-Lovenheim.pdf); R. Morris Coats, *A Note on Estimating Cross Border Effects of State Cigarette Taxes*, *National Tax Journal*, Vol. 48, No. 4, (December 1995), pp. 573-84, [http://ntj.tax.org/wwtax/ntjrec.nsf/notesview/D7AF38C6EF8BF6D7852567EF0057A8C0/\\$file/v48n4573.pdf](http://ntj.tax.org/wwtax/ntjrec.nsf/notesview/D7AF38C6EF8BF6D7852567EF0057A8C0/$file/v48n4573.pdf); Mark Stehr, *Cigarette Tax Avoidance and Evasion*, *Journal of Health Economics*, Vol. 24, (2005), pp. 277-97, <http://legacy.library.ucsf.edu/documentStore/h/j/o/hjo10j00/Shjo10j00.pdf>.
  - 4 Kevin C. Davis et. al., *Cigarette Trafficking in Five Northeastern US Cities*, *Tobacco Control*, December 2013, <http://tobaccocontrol.bmj.com/content/early/2013/12/11/tobaccocontrol-2013-051244>.
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Smuggling takes many forms: counterfeit state tax stamps, counterfeit versions of legitimate brands, hijacked trucks, or officials turning a blind eye.<sup>5</sup> The study's authors, LaFaive and Nesbit, cite examples of a Maryland police officer running illicit cigarettes while on duty, a Virginia man hiring a contract killer over a cigarette smuggling dispute, and prison guards caught smuggling cigarettes into prisons. Policy responses have included banning common carrier delivery of cigarettes,<sup>6</sup> greater law enforcement activity on interstate roads,<sup>7</sup> differential tax rates near low-tax jurisdictions,<sup>8</sup> and cracking down on tribal reservations that sell tax-free cigarettes.<sup>9</sup> However, the underlying problem remains: high cigarette taxes that amount to a "price prohibition" of the product in many U.S. states.<sup>10</sup>

## Cigarette Smuggling Rises with Excise Tax Rates

Cigarette Smuggling vs. State Cigarette Excise Tax Rate, 2013



Note: Positive smuggling percentages are inflow to a state; negative percentages are outflow.  
Source: Mackinac Center for Public Policy; Tax Foundation.

- 5 See, e.g., Scott Drenkard, *Tobacco Taxation and Unintended Consequences: U.S. Senate Hearing on Tobacco Taxes Owed, Avoided, and Evaded*, TAX FOUNDATION, July 29, 2014, <http://taxfoundation.org/article/tobacco-taxation-and-unintended-consequences-us-senate-hearing-tobacco-taxes-owed-avoided-and-evaded>.
- 6 See, e.g., Curtis Dubay, *UPS Decision Unlikely to Stop Cigarette Smuggling*, TAX FOUNDATION TAX POLICY BLOG, Oct. 25, 2005, <http://taxfoundation.org/blog/ups-decision-unlikely-stop-cigarette-smuggling>.
- 7 See, e.g., Gary Fields, *States Go to War on Cigarette Smuggling*, WALL STREET JOURNAL, Jul. 20, 2009, <http://professional.wsj.com/article/SB124804682785163691.html?mg=reno64-wsj>.
- 8 See, e.g., Mark Robyn, *Border Zone Cigarette Taxation: Arkansas's Novel Solution to the Border Shopping Problem*, TAX FOUNDATION FISCAL FACT No. 168 (Apr. 9, 2009), <http://taxfoundation.org/article/border-zone-cigarette-taxation-arkansas-novel-solution-border-shopping-problem>.
- 9 See, e.g., Joseph Henchman, *New York Governor Signs Law to Tax Cigarettes Sold on Tribal Lands*, TAX FOUNDATION TAX POLICY BLOG, DEC. 16, 2008, <http://taxfoundation.org/blog/new-york-governor-signs-law-tax-cigarettes-sold-tribal-lands>.
- 10 See Patrick Fleenor, *Tax Differentials on the Interstate Smuggling and Cross-Border Sales of Cigarettes in the United States*, TAX FOUNDATION BACKGROUND PAPER No. 16 (Oct. 1, 1996), <http://taxfoundation.org/article/tax-differentials-interstate-smuggling-and-cross-border-sales-cigarettes-united-states>.

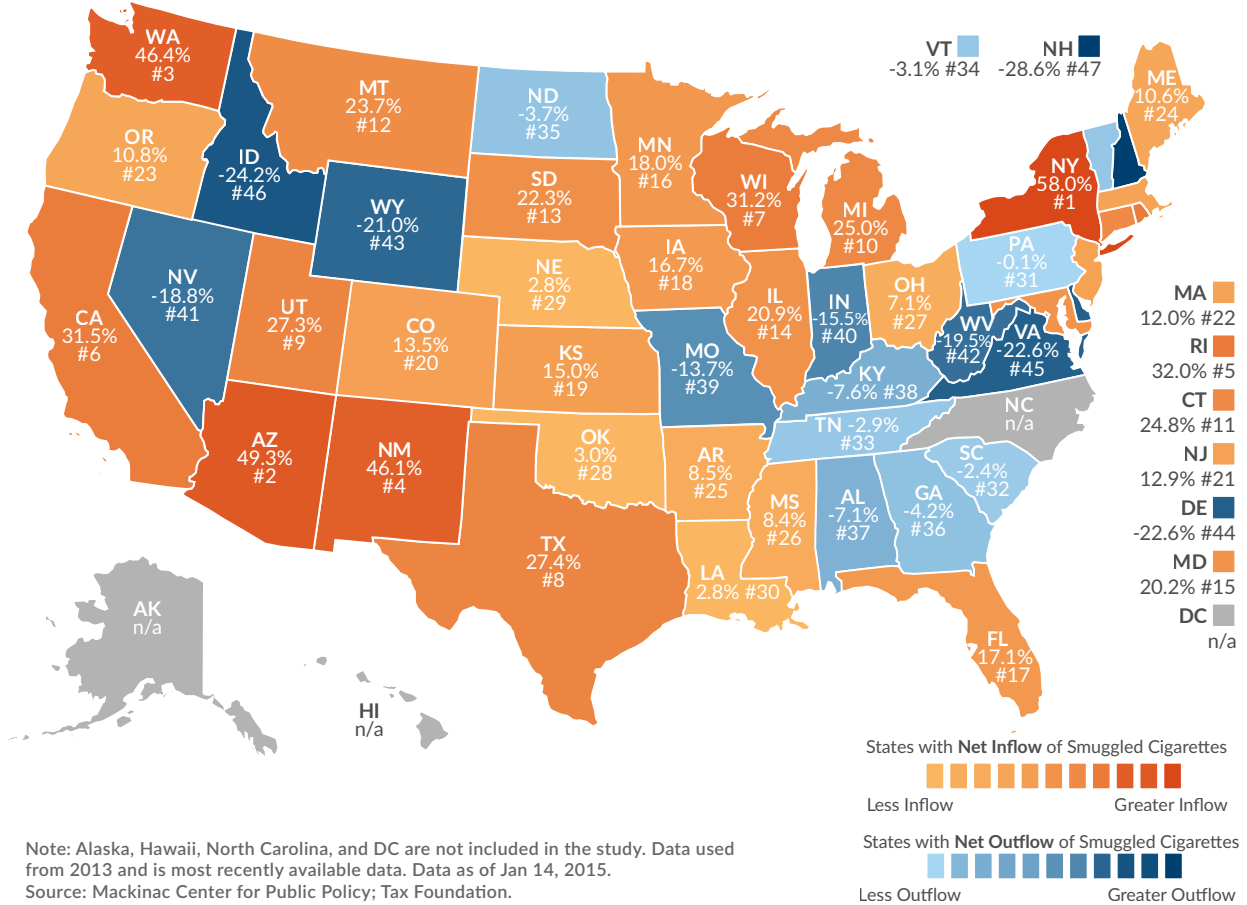
Table 1: 2013 Cigarette Tax Rates, Smuggling Percentages, and Changes Since 2006

	2013 Tax Rate (per pack)	2013 Consumption Smuggled (positive is inflow, negative is outflow)	2006 Consumption Smuggled (positive is inflow, negative is outflow)	2013 Smuggling Rank (1 is most smuggling, 50 least)	Smuggling Rank Change Since 2006 (e.g., NY changed from #5 to #1, so rank changed +4)	Cigarette Tax Rate Change, 2006-2013
New York	\$4.35	+58.0%	+35.8%	1	+4	+190%
Arizona	\$2.00	+49.3%	+32.1%	2	+5	+69%
Washington	\$3.025	+46.4%	+38.2%	3	+1	+49%
New Mexico	\$1.66	+46.1%	+39.9%	4	-2	+82%
Rhode Island	\$3.50	+32.0%	+43.2%	5	-4	+42%
California	\$0.87	+31.5%	+34.6%	6	+0	No Change
Wisconsin	\$2.52	+31.2%	+13.1%	7	+11	+227%
Texas	\$1.41	+27.4%	+14.8%	8	+8	+244%
Utah	\$1.70	+27.3%	+12.9%	9	+11	+145%
Michigan	\$2.00	+25.0%	+31.0%	10	-1	No Change
Connecticut	\$3.40	+24.8%	+12.3%	11	+11	+125%
Montana	\$1.70	+23.7%	+31.2%	12	-4	No Change
South Dakota	\$1.53	+22.3%	+5.3%	13	+15	+189%
Illinois	\$1.98	+20.9%	+13.7%	14	+3	+102%
Maryland	\$2.00	+20.2%	+10.4%	15	+9	+100%
Minnesota	\$1.60	+18.0%	+23.6%	16	-6	+1%
Florida	\$1.339	+17.1%	+6.9%	17	+9	+294%
Iowa	\$1.36	+16.7%	+2.4%	18	+15	+278%
Kansas	\$0.79	+15.0%	+18.4%	19	-7	No Change
Colorado	\$0.84	+13.5%	+16.6%	20	-6	No Change
New Jersey	\$2.70	+12.9%	+38.4%	21	-18	+13%
Massachusetts	\$2.51	+12.0%	+17.5%	22	-9	+66%
Oregon	\$1.18	+10.8%	+21.1%	23	-12	No Change
Maine	\$2.00	+10.6%	+16.6%	24	-9	No Change
Arkansas	\$1.15	+8.5%	+3.9%	25	+6	+95%
Mississippi	\$0.68	+8.4%	-1.7%	26	+11	+36%
Ohio	\$1.25	+7.1%	+13.1%	27	-8	No Change
Oklahoma	\$1.03	+3.0%	+9.6%	28	-3	No Change
Nebraska	\$0.64	+2.8%	+12.0%	29	-6	No Change
Louisiana	\$0.36	+2.8%	+6.4%	30	-3	No Change
Pennsylvania	\$1.60	-0.1%	+12.9%	31	-10	+19%
South Carolina	\$0.57	-2.4%	-8.1%	32	+9	+14%
Tennessee	\$0.62	-2.9%	-4.5%	33	+5	+210%
Vermont	\$2.62	-3.1%	+4.5%	34	-4	+46%
North Dakota	\$0.44	-3.7%	+3.0%	35	-3	No Change
Georgia	\$0.37	-4.2%	-0.3%	36	-1	No Change
Alabama	\$0.425	-7.1%	+0.5%	37	-3	No Change
Kentucky	\$0.60	-7.6%	-6.4%	38	+2	+100%
Missouri	\$0.17	-13.7%	-11.3%	39	+5	No Change
Indiana	\$0.995	-15.5%	-10.8%	40	+3	+79%
Nevada	\$0.80	-18.8%	+4.8%	41	-12	No Change
West Virginia	\$0.55	-19.5%	-8.4%	42	+0	No Change
Wyoming	\$0.60	-21.0%	-0.6%	43	-7	No Change
Delaware	\$1.60	-22.6%	-61.5%	44	+3	+191%
Virginia	\$0.30	-22.6%	-23.5%	45	+0	No Change
Idaho	\$0.57	-24.2%	-6.0%	46	-7	No Change
New Hampshire	\$1.68	-28.6%	-29.7%	47	-1	+110%
Alaska	\$2.00	N/A	N/A	N/A	N/A	+25%
Hawaii	\$3.20	N/A	N/A	N/A	N/A	+129%
North Carolina	\$0.45	N/A	N/A	N/A	N/A	+50%
District of Columbia	\$2.50	N/A	N/A	N/A	N/A	+150%

Source: Mackinac Center for Public Policy; Tax Foundation.

# Cigarette Smuggling by State

Smuggled cigarettes consumed as a percentage of total cigarettes consumed, 2013



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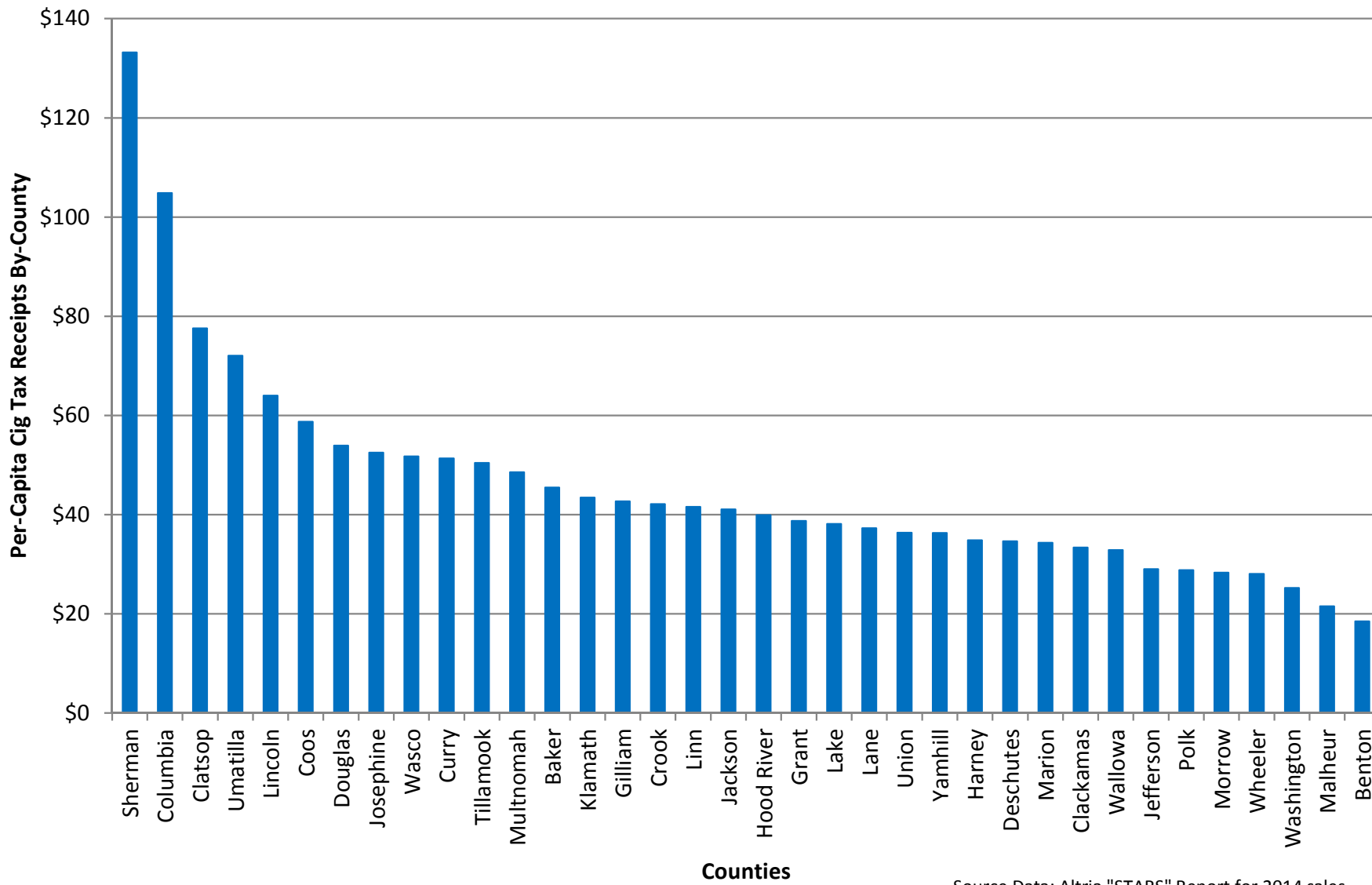
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### Projected \$1 County Cigarette Tax Revenue Per-Capita By-County

Exhibit 5



Source Data: Altria "STARS" Report for 2014 sales