

## Testimony on Cross Border Sales for the House Revenue Committee Daniel Morris, MS, PhD • April 18, 2019

My name is Daniel Morris and I'm a Doctor of Public Health. I am a board member of the Tobacco Free Coalition of Oregon (TOFCO), Upstream Public Health, and the Multnomah County Public Health Advisory Board. I've done research on tobacco taxes and the tobacco industry for over 10 years, and published ten studies on my tobacco research in peer reviewed journals. My tobacco research has been cited over 100 times, including by the U.S. Surgeon General and the Centers for Disease Control and Prevention. My work on roll your own tobacco tax evasion prompted an editorial in the New York Times, and led to a congressional hearing. As an epidemiologist, I support raising tobacco taxes because that's the best way to reduce consumption of the leading preventable cause of death and disease in Oregon. Tobacco taxes are especially important because they keep kids from starting to use tobacco products, and help adult users quit.

Tobacco companies use lots of strategies to oppose tax increases. They know raising the price of their products through higher taxation results in users quitting and smoking less. That's a good thing because fewer smokers means less death and disease, and reduced health care spending, as smokers tend to die expensive deaths. The tobacco industry's business model is recruit new, younger users to replace those their products kill, and to keep people smoking so they can make money off them. To that end, the tobacco industry has lied about the hazards of smoking and the benefits of tobacco control for over 50 years. A federal judge found Big Tobacco companies engaged in a criminal conspiracy to defraud the American public and convicted them of racketeering under laws put in place to take down the mafia.

A big part of the tobacco industry playbook is to fund junk science to muddy the waters and confuse people about the many positive benefits of raising tobacco taxes, and the report from commissioned by the Oregon Neighborhood Stores Association on cross-border sales is really no different. ONSA gets a big chunk of its funding from tobacco companies, and the report cites the Mackinac Center for Public Policy, an advocacy group funded by Big Tobacco since the 1990s to wage a war of misinformation on the impact of tobacco tax increases. The National Research Council and Institute of Medicine's 2015 report, *Understanding the U.S. Illicit Tobacco Market: Characteristics, Policy Context, and Lessons from International Experiences*, found that "industry-sponsored estimates of the size of the illicit market tend to be inflated. More generally, concerns have been raised about the quality and transparency of industry-funded research on the illicit tobacco trade."

You may hear today that tax evasion from cross-border sales is so common as to significantly reduce the revenue raised from a tax increase. I think it is bad policy to base any of Oregon's tax laws on fear that they might stop tax evasion. If tobacco companies were really so concerned about cross border tax evasion in Oregon, they just could stop selling so many cigarettes in border towns.

In reality, the specter of cross-border sales is just another tactic used by the tobacco industry to oppose tax increases. But studies show that smuggling and tax evasion is much smaller than the tobacco industry and its allies claim. Some of the most extensive research on tobacco taxes has been done by Dr. Frank Chaloupka, an economist at the University of Illinois at Chicago. In a study of every major state cigarette tax increase (50 cents or more per pack) from 2006 through 2015, Chaloupka concluded:

First, states that have implemented a significant cigarette tax increase have seen a significant increase in cigarette tax revenues in the 12 months following the tax increase. Second, states that border the state that raises its tax, and that do not raise their own tax, experience minimal changes in their own cigarette tax revenues, with tax revenues falling in most of these states. Third, any increases in cigarette tax revenues in states that border a state that raises its tax are modest at best, implying that overall, any increases in sales in other states due to cross-border shopping by smokers in neighboring states or bootlegging of cigarettes from lower-tax states to a state that raises its tax are relatively small and are far below the reductions in sales in the state that raised its tax.<sup>1</sup>

Because cross border effects are usually so small, I don't bother trying to model them when I forecast tobacco tax revenues. These are marginal effects that are small compared to the overall declines in consumption that we expect from tobacco tax increases. Put another way, the confidence range of the estimate is larger than the contribution of any small effect from cross border sales.

Cigarette taxes are the most powerful intervention to reduce consumption, but they aren't the only factor behind sales trends. Big Tobacco spends \$1 million per hour marketing their products, but no information was given about how much they spend per county and what the money is going to. For a long time Oregon has been a test market for new tobacco products, so the tobacco industry should provide data on local marketing expenditures to provide context for the sales data. By the same token, the industry-funded report doesn't address the effect of comprehensive tobacco control programs, which many studies find have an impact on consumption. Oregon's tobacco prevention program was defunded in 2003 and essentially shut down, starting up again with significantly fewer resources. During that time cigarette sales in Oregon increased. It took years to rebuild the program, but after funding was restored in 2007, consumption in Oregon began to decline again.

The tobacco industry-funded report presented to this committee includes some industry data on cigarette sales. I can't say how accurate or complete these numbers are, as very little information was provided about the methodology by which these data were collected or even what year they are from. I don't know, for instance, if they account for cigarettes manufactured

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<sup>1</sup> [https://tobacconomics.org/wp-content/uploads/2017/11/2017-generic-smuggling-report\\_November-20-2017.pdf](https://tobacconomics.org/wp-content/uploads/2017/11/2017-generic-smuggling-report_November-20-2017.pdf)

on tribal lands or just those sold by major tobacco manufacturers, or what data source was used for population numbers.

Per capita data are especially sensitive to being skewed in areas with small populations. For example, the ONSA report says Sherman County—the second least populous county in Oregon— has the highest per capita cigarette sales in the state. But that could be due entirely to long haul truck drivers stopping at Biggs Junction. Sherman County’s population is so small (under 2,000 residents) that a relatively small number of cigarette sales could produce a large per capita number.

I don’t doubt that there are tobacco retailers in Oregon who are willingly abetting tax evasion by Washington smokers. In fact, this committee heard testimony from some retailers that consider abetting tax evasion to be a fundamental part of their business model. But to be clear, when Washington smokers buy cigarettes in Oregon to take back home, they still owe Washington taxes on them. Failing to pay those taxes is breaking the law. The State of Washington also has compacts in place with tribes, such that when non-tribal members buy cigarettes on tribal lands, they pay state cigarette tax rates.<sup>2</sup>

Even after Oregon raises cigarette taxes by \$2/pack, taxes here will still be lower than in Washington, because Washington applies a 6.5% sales tax to cigarettes on top of the \$3.025 per pack tax. People in Washington will continue to travel to Oregon to work, shop, and avoid sales taxes. But also thousands of smokers will quit, and thousands of kids won’t start smoking, and for those reasons alone increasing tobacco taxes is the right thing to do. Raising hundreds of millions of dollars for health care and tobacco prevention is an important benefit as well.

Raising tobacco taxes increases net revenue collections, even as higher taxes lower consumption, help smokers quit, and prevent kids from getting addicted. If the Committee is truly concerned that a \$2 per pack increase won’t raise enough revenue, I’d recommend passing a tax increase of \$2.50 or \$3, and raising the tax rate on other tobacco products as well.

Thank you for the opportunity to testify. I’d be happy to answer any questions.

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<sup>2</sup> <https://dor.wa.gov/get-form-or-publication/publications-subject/tax-topics/cigarettes-are-tax-free-cigarettes-really-tax-free>