



New York Cigarette Tax Now Highest in Nation

On June 21, the State of New York increased the excise tax on a package of cigarettes by \$1.60, as part of an emergency budget measure. This fifty-eight percent increase, which became effective on July 1, made New York’s cigarette tax the highest state cigarette tax in the country, at \$4.35 per pack. Cigarettes sold within the boundaries of New York City face an additional \$1.50

municipal tax, bringing the total state and local taxes on a pack of cigarettes up to \$5.85. Throughout New York City, packages of cigarettes are now retailing for as much as \$15 each. The new law also implements the same increased tax on “little cigars,” and raises the tax rate on cigars and tobacco products (other than snuff and little cigars) from 46% to 75% of the wholesale price. The tax on snuff was also increased from \$.96 to \$2.00 per ounce. The new tax increase is aimed at generating revenue to help the state close a budget deficit of over \$9 billion. Health advocates also supported this tax increase, as the new tax should result in a decline in the smoking rate, especially among the state’s price-sensitive youth population.

exclusively from agents or wholesaler dealers who have obtained approval from the state tax department. Under both systems, tax-free cigarettes are to only be distributed to members of the tribe who are purchasing the tax-free cigarettes.

Opponents of the tax increase argue that higher cigarette prices are going to lead to more tobacco smuggling and illegal tax-free cigarette sales. However, the state anticipates many positive results from the tax increase. With this new legislation, New York is projected to generate an additional \$440 million per year in tax revenue (\$290 million from the increased price and another \$150 million with the enforcement of taxes on Native American reservation sales). This additional revenue will help to offset the immense healthcare costs faced by the state, especially those generated from smoking-related illnesses.

New York	\$4.35
Rhode Island	\$3.46
Washington	\$3.03
Hawaii	\$3.00
Connecticut	\$3.00
New Jersey	\$2.70
Wisconsin	\$2.52
Massachusetts	\$2.51
D.C.	\$2.50
Vermont	\$2.24

[source](#)

In addition to raising taxes, this new legislation will allow the state to begin collecting taxes from cigarette sales on Native American reservations, beginning September 1, 2010. The state has not done so since the early 1990’s when it encountered strong resistance from Native American tribal members. Native American cigarette vendors argue that this new plan to collect taxes on reservation cigarette sales infringes on their sovereignty and is in violation of their federal treaty rights. However, New York feels as though collection of taxes on Native American reservation cigarette sales is within the state’s authority and that it is necessary for reservation cigarette retailers to comply with the tobacco policies of the state when making sales to people who are not members of Native American tribes.

[More information from the New York State Department of Taxation and Finance is available here.](#)

New York	\$4.35
Connecticut	\$3.00
New Jersey	\$2.70
Massachusetts	\$2.51
Vermont	\$2.24
Pennsylvania	\$1.60

[source](#)

This new policy involves a dual collection system in which reservation cigarette vendors must either comply with a tax-exempt coupon system or purchase tax-free cigarettes

Inside this issue:

- Journal Article Examines Potential for Smoke-Free Public Housing **2**
- Supreme Court Will Not Review RICO Decision Against Tobacco Industry **2**
- U.S. Navy Bans Smoking Aboard Submarines **3**
- Seneca Tobacco Retailers Challenge PACT Act **3**
- Smokers Sue Philip Morris for Chest Scans **4**
- Study Finds Link Between Retail Tobacco Advertising and Youth Smoking **4**

Journal Article Examines Potential for Smoke-Free Public Housing

On June 17th, the New England Journal of Medicine (NEJM) published an article analyzing the feasibility and effectiveness of regulating smoking in public housing. The Department of Housing and Urban Development (HUD) released a letter last year strongly encouraging public housing authorities (PHA's) to adopt smoke-free policies, and the authors urge HUD to take further action. The article was written by Dr. Jonathan Winickoff of the Harvard School of Medicine, Mark Gottlieb of the Public Health Advocacy Institute, and Dr. Michelle Mello of the Harvard School of Public Health.

Secondhand smoke contains many toxins and can cause lung cancer and cardiac disease, and is particularly dangerous for the elderly, children, and those with severe health conditions. Smoke can move between units in a building, and no ventilation technology has been proven effective. Most of the 7 million Americans who live in public or Section 8 housing are exposed to these risks since only 4% of local PHA's have adopted smoke-free policies.

The NEJM article looked at three options regarding the regulation of secondhand smoke in public housing. First, HUD could take no further action beyond the letter that

HUD has already sent out. Unfortunately, PHA's currently have little incentive to implement smoke-free policies. Low income tenants are less able to find alternative housing, initial clean-up and implementation costs would be significant, and HUD has not made funding contingent on putting smoke-free policies in place. Second, HUD could link implementation of a smoke-free policy to funding, which would incentivize PHA's to implement smoke-free policies. Third, HUD could reinterpret its safety rules so that smoking is no longer considered safe. This would effectively prohibit smoking in all PHA housing.

In considering these options, the journal article weighs the benefits of going smoke-free with the challenges and burdens of each potential policy option. The largest obstacle would be to develop a system of penalties to deal with tenants who continue to smoke after a smoke-free policy has been implemented. Sanctions already exist at HUD for health code, drug and alcohol violations, however, and similar rules could be put in place for violation of smoke-free rules. Termination of the tenancy would need to be a very last resort, since the goal of public housing is to provide safe housing to low-income tenants

who have few, if any, other housing options. Despite challenges in implementing any new policy, the authors think that the benefits are worth the costs. They note that many tenants in low-income housing are either elderly or have children, and that most residents do not have the option of seeking smoke-free housing elsewhere.

The article also discusses prohibiting smoking in buildings where section 8 tenants live. Although the benefits would be similar, there would be other challenges. In particular, Section 8 tenants are responsible for finding their own housing, and this type of restriction may dissuade landlords from taking on such tenants. This is especially a problem in the many states that do not have statutes prohibiting discrimination against Section 8 tenants. However, the authors note that smoke-free housing is a growing trend in the rental housing market across the country, and therefore applying a smoke-free requirement to Section 8 housing may become feasible in the near future.

[The full text of the article is available here.](#)

Supreme Court Will Not Review RICO Decision Against Tobacco Industry

On June 28, the U.S. Supreme Court declined to review the appeals court's decision in the long-running litigation brought by the U.S. Department of Justice (DOJ) against the major tobacco companies. The lawsuit, first filed in 1999, alleged that the tobacco companies had violated the Racketeer Influenced and Corrupt Organizations Act (RICO) by misleading the public about the effects of smoking and secondhand smoke, the addictiveness of cigarettes, the dangers of "light" cigarettes, and much more. In 2006, U.S. District Court Judge Gladys Kessler agreed with most of the DOJ's factual allegations and ruled that the tobacco companies had violated RICO when, among other things, they "lied, misrepresented and deceived the American public, including smokers and the young people they avidly sought as 'replacement' smokers, about the devastating health effects of smoking and environ-

mental tobacco smoke." Because of a prior ruling by the appeals court, however, Judge Kessler was not able to order the tobacco companies to disgorge (give up) their ill-gotten past profits or pay other monetary penalties. Although tobacco control advocates and the DOJ had hoped that the Supreme Court would reconsider the ruling on disgorgement, the decision to not review the case means the district court's findings against the tobacco companies will stand, and the remedial measures ordered by the trial court will go into effect. The district court's decision requires the tobacco companies to make corrective statements in television and print advertising, on their websites, and on cigarette packages regarding their 50-year effort to deceive the American public. The tobacco companies must also report data about their marketing to the federal government annually,

and they must continue to make available to the general public the internal documents that were produced during the course of the litigation.

[For more information about Judge Kessler's ruling, click here.](#)



U.S. Navy Bans Smoking Aboard Submarines

The United States Navy recently announced that all of its submarines will be 100% smoke-free by January 1st, 2011. Currently, smoking is permitted in designated smoking areas on submarines. Not surprisingly, a recent study found that secondhand smoke aboard submarines is detrimental to the health of all crew members. The study confirmed that secondhand smoke lingers in submarines and presents a health hazard even to those who don't smoke, despite advanced air purification technology designed to keep the air clean when submarines submerge for extended periods of times (sometimes up to three months.)

Vice Admiral John Donnelly, commander of the U.S. Submarine Force, commissioned a study in 2009 to determine whether the health of non-smoking crew members was suffering due to secondhand smoke aboard submarines. Non-smoking crew members on nine submarines were tested for exposure to the harmful chemicals in tobacco smoke before and after lengthy submarine deployment. While few sailors had signs of exposure to tobacco smoke before the voyage, they all had measureable signs of exposure to the harmful chemicals found in tobacco

smoke upon returning. "Our sailors are our most important asset to accomplishing our missions. Recent testing has proven that, despite our atmosphere purification technology, there are unacceptable levels of secondhand smoke in the atmosphere of a submerged submarine," stated Donnelly. This current change in policy occurs 16 years after the Navy banned smoking indoors, but permitted an exception for designated areas aboard submarines. While the Navy does not have plans to go completely tobacco-free, Donnelly states, "the Submarine Force is dedicated to mitigating unnecessary risks to our sailors. Exposure to a harmful substance that is avoidable, such as secondhand smoke, is unfair to those who choose not to smoke." The 2006 Surgeon General's report on environmental tobacco smoke concluded that there is no safe level of exposure to tobacco smoke.

Approximately 5,000 of the 13,000 submarine crew members in the U.S. Submarine Force say they are smokers, ranging from a pack a day to those who smoke an occasional cigar. In order to help crew members adapt to the new policy, a cessation sup-

port program will be available and the submarines will be stocked with nicotine patches and gum. However, current Navy policy does not permit the use of smoking cessation drugs like Zyban and Chantix, as these drugs have the possibility of psychological side effects. There will be no restriction on smokeless tobacco products, but smokers are encouraged to quit rather than switch to smokeless products. Many commanding officers have plans to gradually reduce smoking aboard their submarines before the January 1st deadline. While some are concerned about the withdrawal symptoms that crew members will experience, many are optimistic about the health benefits and see this as a chance to finally snuff out a smoldering health issue in our nation's military.



Seneca Tobacco Retailers Challenge PACT Act

On June 25, 2010, a complaint was filed in a U.S. District Court in the Western District of New York by a Seneca Nation of Indians smoke shop dealer, challenging the constitutionality of the recently enacted Prevent All Cigarette Trafficking (PACT) Act. The plaintiff, who distributes tax-free cigarettes via the internet, phone orders, and mail orders, is claiming that the federal PACT Act violates federal Native American treaty rights, the Commerce Clause, the Import-Export clause, the Due Process Clause, the Equal Protection Clause, and the Tenth Amendment of the United States Constitution.

On July 1st, the Seneca Free Trade Association, which consists of over 140 tobacco retailers, joined the lawsuit. Like the original plaintiff, the Seneca Free Trade Association has obtained a temporary restraining order against the PACT Act and is awaiting a decision on a motion for a preliminary injunction. The temporary restraining orders are in effect until July 30th, and prohibit authorities

from enforcing the law against any of the plaintiffs. A ruling on their preliminary injunction motions could be issued prior to the end of July. If granted, a preliminary injunction would bar enforcement of the PACT Act against the plaintiffs for the duration of the lawsuit.

The PACT Act, which took effect on June 29, was signed into law by president Obama in March after it easily passed through the House (387-25) and was unanimously approved by the Senate. The law was put into place for the purpose of combating cigarette tax evasion as well as the ease with which minors are able to purchase cigarettes from internet retailers. The PACT Act prevents the U.S. Postal Service from delivering commercial cigarette shipments, mandates that all federal, state, local and/or tribal taxes are paid before any tobacco products can be delivered to a customer, and requires delivery service employees to check the identifica-

tion of any customer receiving a tobacco shipment.

Government officials have aggressively sought a solution to the problem of lost tax revenue from cigarette tax evasion. Health advocates wish to put an end to internet cigarette sales that allow minors to purchase tobacco products without having to go through adequate age verification systems. Also, the National Association of Convenience Stores advocates that many law-abiding convenience stores have suffered and many jobs have been lost due to the inability to compete with Native American cigarette vendors who are distributing tax-free cigarettes at a much cheaper cost.

For the full text of the PACT Act, [click here](#). For more information from the Campaign for Tobacco-Free Kids about what the PACT Act does, [click here](#).

Smokers Sue Philip Morris For Chest Scans

On June 24, 2010 in Boston, MA, U.S. District Court Judge Nancy Gertner granted a request to certify a class action lawsuit against Philip Morris which, if successful, will require the company to pay for chest scans of long-time Marlboro cigarette smokers. While most lawsuits against the tobacco companies have sought monetary damages to compensate plaintiffs for their injuries caused by smoking, this lawsuit seeks preventative remedies in order to mitigate injuries that have yet to occur. The plaintiffs contend that the chest scans will offer them a six times higher likelihood of survival than they would otherwise have if they are ever diagnosed with lung cancer.

The judge's decision to certify the class means that additional plaintiffs may join the lawsuit if they have circumstances similar to the two original plaintiffs. Eligible plaintiffs to the class action lawsuit must be at least fifty years old and have smoked a pack or more of Marlboro cigarettes each day for the last 20 years. Marlboro brand cigarettes are specified because the original two plaintiffs smoked Marlboro cigarettes. The low-dose tomography scan for which plaintiffs are seeking payment from Philip Morris typically costs between \$400 and \$500. According to Christopher Weld Jr., an attorney for the plaintiffs, the test is not always covered by insurance plans.

Philip Morris has stated its intention to appeal the class action ruling, arguing that class action status isn't appropriate because the plaintiffs' claims raise issues that are unique to each individual plaintiff. However, if the lawsuit is successful, many similar lawsuits against other cigarette manufacturers are likely to follow.

Study Finds Link Between Retail Cigarette Advertising and Youth Smoking

A recent study published in *Pediatrics*, the official journal of the American Academy of Pediatrics, reveals that frequent exposure to retail advertising increases the likelihood that adolescents will begin smoking. Researchers surveyed a group of 2,110 students in grades 6-8, questioning them about their smoking behavior and three different measures of exposure to retail tobacco advertising: (1) frequency at which they visited certain types of stores known to have high levels of tobacco advertising, (2) frequency at which they visited specific stores which had pervasive tobacco advertising near their school, and (3) how frequently they believed they saw tobacco advertising in retail stores. This survey was administered to the same group of students three times, once at the beginning of the study, then 12 months later, and finally 30 months later (when the students were in grades 9-11). The results of the study show that those who visited stores with heavy tobacco advertising twice a week or more were twice as likely to start smoking as those who visited these types of stores less than once every two weeks. The study controlled for a variety of known risk factors for smoking initiation among youth such as parents and friends who smoke, unsupervised time after school, poor grades, and various socioeconomic factors.

This is the first longitudinal study (one which tracks a group over time) on this subject, but it is part of a growing body of evidence that demonstrates the effect that increasingly prevalent retail tobacco advertising has on youth smoking. This study adds an important new piece of evidence by demonstrating the cause and effect relationship between frequency of exposure and likelihood of smoking initiation. This evidence indicates that children's exposure to retail tobacco advertising should be limited and that policy makers should consider placing restrictions on retail tobacco advertising.

For the full study, [click here](#).

CENTER FOR PUBLIC HEALTH AND TOBACCO POLICY

New England Law | Boston
154 Stuart St.
Boston, MA 02116

Phone: 617-368-1465

Fax: 617-368-1368

E-mail: tobacco@nesl.edu

Web: <http://www.tobaccopolicycenter.org>

The Center for Public Health and Tobacco Policy (Center) is a new resource for the New York tobacco control community. The Center is funded by the New York State Department of Health and will be working with the New York State Tobacco Control Program and its contractors to develop and support policy initiatives that will reduce tobacco-related morbidity and mortality in New York.

The Center is located at New England Law | Boston and is project of the Center for Law and Social Responsibility. The Center is also affiliated with the Tobacco Control Legal Consortium.

The Center will work with tobacco control advocates in New York to support the adoption of evidence-based policies that reduce the availability of tobacco products, protect non-smokers from secondhand smoke, and minimize tobacco advertising and promotion.

Please Note: The Center is funded to provide assistance to the New York State Tobacco Control Program and its contractors. At this time, the Center is unable to provide assistance to individuals or groups who are not funded by the New York State Tobacco Control Program.