



Nov 27, 2014

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Federal & State Tobacco Taxes – On Fire or Just Smoking? Part II

In follow-up to [Part I of this article](#) which covered the Federal Excise Tax ("FET") considerations for a company involved in the tobacco industry, Part II of this article will focus primarily on the *state* excise tax side of the business, including state excise/tobacco basics, permits, obligations and reporting requirements, including those mandated by Federal legislation, as well as hot state tobacco tax topics and issues from around the country.

Basics of Tobacco Products and Types of Businesses for State Excise Tax Purposes

As an initial matter, in addition to evaluating any FET obligations, a business must also analyze and determine any *state* excise tobacco tax registration, filing, reporting and payment obligations related to the company's tobacco product operations. This analysis becomes even more important for a company seeking to sell or distribute its tobacco products in multiple states, as every state has its own statutory definitions for each type of tobacco product company (e.g., manufacturer, wholesaler, distributor, dealer, retailer, subjobber, etc.), all of which have varying state excise/tobacco tax liabilities and obligations depending on the type of operations the business is involved in, the company's customers (licensees versus consumers), the method of sale or distribution (e.g., online versus standard orders), and the company's location (*i.e.*, resident versus non-resident).

As is true for any business operation, a company involved in the manufacturing, distribution and/or selling of tobacco products in a particular state typically must register with the respective state's department of revenue, as well as apply for and obtain one, or several, licenses/permits to legally operate and/or distribute tobacco products within the state. If a company has multi-state operations, such as a multi-state cigar wholesaler, the company likely must apply for and obtain the proper permit/license for engaging in its resident and non-resident wholesale business. Or, if

a company is involved in more than one type of tobacco product operation (e.g., wholesale and retail sales, or manufacture and wholesales), the company typically must obtain the proper permit for each specific operation (and potentially for each location/warehouse the company has within a state). Particular attention must be given to each state's statutory permit/license requirements, as penalties (including criminal in some states) may apply if a company fails to obtain the proper permit or to obtain any permit whatsoever.

Once the proper tobacco product permit(s) is obtained, in order to fully evaluate a company's potential state excise/tobacco tax obligations, if any, one must then determine the specific type of tobacco product being manufactured, imported, sold or otherwise distributed by same, as the tax rate and reporting responsibilities vary greatly for cigarettes, cigars and other tobacco products. For example, most states separately define cigarettes from all other types of tobacco products, but some, like Florida, exclude large cigars from the definition of other tobacco products as it is the only state not to impose a state excise tax on large cigars.^[1] Several non-profit organizations provide basic information online for the various state excise/tobacco tax rates for each state.^[2]

In addition to these various state excise/tobacco tax considerations, a company must also be aware of any *sales* tax on the sale of tobacco products, as many states also impose state (and even local) sales (or business) tax on these products. This means that in addition to applying for and obtaining tobacco tax permits for a company's operations, it may also need to register with each state it sells or distributes tobacco products in for sales tax purposes and obtain a separate sales tax account with the respective department of revenue (assuming sufficient nexus with a state exists). The potential state sales tax obligations for a company depends primarily on the company's customers, as sales to wholesalers typically would not be subject to sales tax (as it would be a sale for resale assuming the proper resale exemption certificate is obtained), while sales directly to individual consumers (through an in-state retail location and potentially through out-of-state sales to resident consumers via online sales) would likely be

subject to a sales tax – but again, this all depends on the particular state’s statutes and regulations.^[3] Moreover, some states even require that separate legal entities be created in order for a company to sell tobacco products to state licensees, as well as directly to consumers.^[4]

Typical State Excise/Tobacco Tax Payment and Reporting Obligations

Once the specific type of tobacco product and the exact operations involved with same have been identified, and the proper permits have been obtained, one can then look to the specific state excise/tobacco rate and Federal and state reporting, compliance, and other requirements for such products and activities.

A. Standard State and Local Excise Tax Reporting and Payments Requirements

If a company manufactures, sells or otherwise distributes tobacco products in a state and believes that it is obligated to report same or pay state excise/tobacco tax under the state’s statutory and regulatory provisions, states typically require monthly, as well as annual, reporting of such operations (including information on the type of product, amount of products sold, customers, shipment, invoices, etc.) to the state. Additionally, monthly state tobacco/excise tax returns must be filed showing the amount of state tobacco/excise tax due for the period, and typically require payment along with the return. Many states now require that all tobacco/excise tax-related filing, reporting and/or payment be made electronically.

Note that even if a company determines that no excise or tobacco tax is not due on its sale or manufacture of products, or if a company does not have any sales whatsoever within a state for a certain reporting period, many states still require that an “information” only report be filed to notify the state of the company’s activities. So, again, a company must be familiar with all statutes, regulations, ordinances and administrative guidance for *each* state (and locality) it manufactures, sells or distributes

tobacco products. Thus, the use of a local attorney or attorney familiar with the laws for the involved states is recommended for companies involved in multi-state operations.

B. Master Settlement Agreement Requirements for Cigarette Manufacturers

As background, the Tobacco Master Settlement Agreement (“MSA”) was entered in 1998 between the four largest tobacco companies in the United States which at the time controlled nearly 97% of the industry (considered “original participating manufacturers” or “OPMs”) and 46 of the 50 states (as well as District of Columbia, Virgin Islands and Puerto Rico)[\[5\]](#), in a global settlement of these states’ Medicaid lawsuits against these tobacco companies for tobacco-related health care costs. By entering into the MSA, these companies were protected from private tort liability for tobacco-related illnesses, but in return became subject to strict limitations on the marketing of certain tobacco[\[6\]](#), as well as required to pay, in perpetuity, annual payments to the states to compensate them for medical costs associated with caring for its citizens with tobacco-related illnesses, and to fund anti-smoking advocacy groups to speak out regarding the health effects from tobacco product use.[\[7\]](#)

In addition to the OPMs, several other tobacco companies subsequently joined the MSA (subsequent settling parties or “SSPs”). These settling manufacturers are collectively referred to as the Participating Manufacturers (“PMs”). There are, however, a number of companies that chose not to participate in the MSA and such companies are referred to as Nonparticipating Manufacturers (“NPMs”), but these companies must still make payments to the states based on their share of the market.

Pursuant to the MSA, all payments from PMs are deposited into an escrow account to be disbursed to the settling states which the PM is involved. Many states adopted similar or complimentary model escrow statutes which impose certification requirements for all cigarette manufacturers, as well as require NPMs selling cigarettes in a given state to either: (i) join the MSA and make all PM-related payments, or (ii) remain a NPM but make similar annual payments into the state’s escrow fund.[\[8\]](#) A NPM annual escrow payment to a particular state is typically calculated by multiplying a per-cigarette

amounts (as set forth in the particular state's statute), by the amount of cigarettes the NPM sold in that state each year.^[9]

Regardless of the classification, nearly all states require every cigarette manufacturer to apply for and be added to the respective state's manufacturer "directory" which lists all certified manufacturers, and all related brands of cigarettes and restricted tobacco products, on an annual basis, prior to being able to legally sell same within the state, pursuant to the mandates of the MSA and the state's complimentary model statutes.^[10]

PACT Act and Related Federal Registration & Reporting Requirements

A. Who is subject to the PACT Act?

In addition to each state's specific excise/tobacco tax reporting and compliance requirements, there are also certain state tobacco tax-related reporting requirements set forth in Federal legislation which must also be considered. Federal statutes, 15 U.S.C. §§ 375 to 378, known as the PACT Act, formerly known as the Jenkins Act prior to amendments which went into effect on June 29, 2010, impose certain registration and reporting requirements on:

Any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce, whereby such cigarettes or smokeless tobacco are shipped into a State, locality, or Indian country of an Indian tribe taxing the sale or use of cigarettes or smokeless tobacco, or who advertises or offers cigarettes or smokeless tobacco for such a sale, transfer, or shipment... (emphasis added).^[11]

Note that the PACT Act requirements only apply to cigarettes (including little cigars^[12]) and smokeless tobacco, *not* large cigars or pipe tobacco.

Pursuant to the PACT Act, any person that sells, transfers or ships for profit cigarettes (and smokeless tobacco) in a state, locality or Indian country must: [1] file a statement with the United States Attorney General and with state, local and tribal tobacco tax

administrators into which cigarettes are shipped and [2] file monthly reports of invoices for shipments with such state and local tax administrators.[\[13\]](#)

The PACT Act focuses on ensuring that state and local excise tax is paid on “delivery sales” (i.e., those made to consumers). A company that is classified as a delivery seller must comply with state, local and tribal excise tax related laws and collection requirements as well as PACT Act requirements for shipping and recordkeeping.[\[14\]](#) A distributor that does not sell to consumers[\[15\]](#) in interstate commerce, however, would not be making delivery sales as it does not sell, ship or deliver cigarettes (or other PACT Act relevant tobacco products) to consumers; and would not be considered a delivery seller and not subject to such rules.[\[16\]](#)

B. Federal and State PACT Act Statement Filing and Reporting Requirements

The PACT Act requires the filing of a statement with a Federal agency[\[17\]](#) and with the applicable tobacco tax administrator (i.e., the state, locality or tribal official authorized to collect or administer the tobacco tax) of each “subnational jurisdiction into which shipments are made.”[\[18\]](#) The statement requires a company to provide its: name and trade name; address and phone number; a principal email address; any website addresses; and the name, address and telephone number of an agent in the state authorized to accept service on behalf of the person.[\[19\]](#)

The federal PACT Act filing requirement can be met by filing with the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”).[\[20\]](#)

So, although the statutory text literally requires the filing of the statement with the U.S. Attorney General, the ATF administers this provision.[\[21\]](#)

State, locality and tribe PACT Act filing requirements may be met by filing with the respective tobacco tax administrator: a copy of the federal form, a statement containing the required information, or a jurisdiction-specific form.[\[22\]](#) Copies of PACT Act filings and submissions thereof (e.g., certified mail receipts, e-mail receipts, etc.) should be retained in the event that compliance with this requirement must be proven.

In regard to state and local reporting requirements under the PACT Act, a company subject to the Act must report its shipments of cigarettes, little cigars and/or smokeless tobacco (i.e., a memorandum or copies of all invoices) no later than the tenth day of each calendar month following the month the product was shipped to the tobacco tax administrator of the state into which the shipment was made.[\[23\]](#)

Civil penalties (e.g., \$5,000 for the first violation and \$10,000) and criminal penalties (i.e., imprisonment for not more than three years) can be imposed for failure to comply with PACT Act requirements. [\[24\]](#) Moreover, the Federal government, as well as Federal courts have the authority to prevent and restrain companies due to PACT Act (and formerly the Jenkins Act) violations.[\[25\]](#)

C. Miscellaneous Federal Restrictions on Tobacco Marketing & Shipment

Although not specifically tax-related, it is important to understand that the U.S. Food and Drug Administration (“FDA”), pursuant to the MSA, is authorized to regulate the marketing and advertisement of “tobacco products” – a term which includes cigarettes, smokeless tobacco and roll-your-own tobacco, but not large cigars or pipe tobacco. This authority is set forth under the 2009 Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”).[\[26\]](#) The Tobacco Control Act places strict limitations on the packaging, brand and labeling of these tobacco products, including an outright prohibition of distributing or providing free sample cigarettes to consumers. Note that the FDA is currently working to promulgate a Federal regulation making large/premium cigars also subject to the Tobacco Control Act and the restrictions found therein, and a proposal for same may be released in the near future.[\[27\]](#)

The Federal Trade Commission (“FTC”) also has enacted legislative acts and regulations related to the advertising and packaging of tobacco products by way of the Federal Cigarette Labeling and Advertising Act of 1966, as amended by the Comprehensive Smoking Education Act of 1986 and the Tobacco Control Act (see above). Likewise, these limitations overseen by the FTC currently apply primarily to cigarettes (not large cigars), and are concerned with preventing and punishing deceptive and unfair practices.[\[28\]](#)

Additionally, a company must also be aware of any additional state specific statutory requirement or limitations on the sale or distribution of tobacco products within each state.

Hot Topics in State Tobacco Tax

As most states are searching for new sources of revenue through the application of taxes which were not traditionally enforced, there have been a number of recent tobacco-related issues which have sprung up over the last few years.

For example, many states with traditionally low state excise/tobacco tax on the sale of cigarettes, and or of other tobacco products, have begun introducing state legislation to increase the excise tax rate on all tobacco products and/or to remove any disparity between the tax rates for certain tobacco products. Ohio and Kentucky are recent examples of this effort to increase the tax rate and close the gap on the sale of tobacco products within the state.[\[29\]](#) This trend is likely to continue nationwide over the coming years.

Also, one of the most recent hot topics in state tobacco tax is due to a new form of tobacco-related products, the electronic cigarette (or “e-cig”). Although e-cigs do not technically (or chemically) include tobacco, and may not fit within a state’s current statutory definitions for tobacco products, it has not stopped many states from attempting to tax same in a similar manner, including Kentucky, Utah, Ohio, Minnesota, New Jersey, and Washington, to name a few. [\[30\]](#) Likewise, with the recent development of legal marijuana sales in Colorado, which has issued formal guidance regarding the taxability of such items[\[31\]](#), other states may be exploring the possibility of allowing same in the near future, and may attempt to tax these products similarly to tobacco products.

Lastly, given the recent enactment of the PACT Act (discussed above) and states’ strict enforcement of same, a recent trend has developed in which states are now going after individual consumers, once they prosecuted the underlying online retailers, for any remaining state back excise/tobacco tax due on purchases of cigarettes and certain smokeless tobacco, with Arizona being one of

the most aggressive in this area.^[32]

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[1] Florida imposes state excise tax on cigarettes, snuff, chewing tobacco, “little cigars” and loose smoking tobacco, but not large cigars. See F.S.A. §§ 210.25(11); 210.010; 210.011; 210.02; 210.276. See also, *Hi Neighbor Enterprises v. Wynne* [case number unavailable] (Fla. Cir. Ct. 2d Cir. 1973) (holding that the amended definition for “cigarettes” was meant to include little cigars, not true/large cigars).

[2] See e.g., Campaign for Tobacco-Free Kids (providing state by state analysis of tobacco tax rates on cigarettes and other tobacco products), available at

http://ltgovernor.ky.gov/taxreform/Documents/20120529_TobaccoFreeKids.pdf

[3] Although several arguments can be made that the online or remote sales of items (such as large cigars) to consumers in multiple states may not be taxed pursuant to the Federal Commerce Clause under *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), and the Due Process Clause [U.S. Const. amend. XIV §1], especially after recent cases have strengthened same [see e.g., *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846 (2011); *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011); *Daimler AG v. Bauman*, Dkt. No. 11-965 (U.S. Jan 14, 2014); *Walden v. Fiore*, Dkt. No. 12-574 (U.S. Feb. 25, 2014)], such an analysis is outside the scope of this article. But note that a Federal appellate decision recently upheld a plaintiff’s Due Process arguments against the PACT Act’s mandatory excise tax provisions on the involved internet and mail orders due to a lack of nexus/minimum contacts with certain states. See *Red Earth LLC v. United States*, 657 F.3d 138 (2d Cir. 2011).

A company must also determine if it makes “remote” sales of tobacco products into states which have enacted forms of what is commonly referred to as “Amazon Laws” (such as New York, North Carolina, Rhode Island, Illinois, Colorado, Ohio, Connecticut, etc.) and must also be vigilant of Federal legislation regarding same, the Marketplace Fairness Act [H.R. 684, S. 226 & S.743], which is

currently pending before Congress. See N.Y. Tax Law section 1101(b)(b)(vi); N.C. Gen. Stat. section 105-164.8(3); R.I. Gen. laws section 44-18-15(a); Illinois H.B. 3659, 96th Gen. Assem. (Ill. 2011); Colo. H.B. 10-1193 (2010); Colo. Rev. Stat. § 39-21-112(3.5); Ohio 2013 Biannual Budget Bill (Amended Sub. H.B. 59, eff. Jul. 1, 2013); SB 1239, Gen. Assem, Jan. Session., 2011 (Conn. 2011).

[4] See Tennessee Important Notice No. 13-10 (Oct. 1, 2013); Tennessee Important Notice No. 13-07 (Jun. 1, 2013).

[5] See Master Settlement Agreement, § II (qq) (defining “Settling State” to exclude “the States of Mississippi, Florida, Texas and Minnesota,” all of which had previously reached individual settlement agreements with the tobacco industry and thus did not enter into the MSA). A full copy of the MSA is available online at http://www.naag.org/backpages/naag/tobacco/msa/msa-pdf/MSA%20with%20Sig%20Pages%20and%20Exhibits.pdf/file_view.

[6] See e.g., MSA §III(a) (agreeing not to “take any action, directly or indirectly, to target Youth within any Settling State in the advertising, promotion or marketing of Tobacco Products, or take any action the primary purpose of which is to initiate, maintain or increase the incidence of Youth smoking within any Settling State”).

[7] Master Settlement Agreement, *supra*.

[8] See, for example, states like Alabama [Title 6, Chapter 12, Alabama Code & Ala. Admin. Code 810-7-1-.11, .17 & .22]; Arizona [Ariz. Rev. State Ann. §44-711]; Arkansas [Ark. Code Ann. § 26-57-261]; California [Ca. Rev. & Tax. Cd. § 30165.1] Colorado [Colo. Rev. Stat. § 39-28-202]; Connecticut [Conn. Gen. Stat. § 4-281]; Illinois [Ill. Admin. Code 445.20]; Iowa [Iowa Code § 453C.2]; Kansas [Ka. Stat. Ann. § 50-6a03]; Kentucky [KRS 131.600-131.630, & Revenue Form 73A420]; Montana [Mont. Code Ann. § 16-11-403]; Nebraska [Neb. Rev. Stat. §§ 69-2703-69-2706]; Ohio [R.C. §§ 1346.01-1346.10]; New Hampshire [N.H. Rev. Stat. Ann. § 541-D:3 & D:5]; New Jersey [N.J. Rev. Stat. §§ 52:4D-4 – 52:4D-6]; New York [NYCRR 89.4, Tax Law, sections 473-a, 475; Public Health Law, art. 13-G]; Oklahoma [Okla. Stat. §§ 360.3-360.6]; Oregon [Or. Rev. Stat. § 180.806]; South Dakota [S.D. Codified Laws § 10-50B-7]; Tennessee

Code Ann. § 67-4-2602]; Utah [Utah Code Ann. §§ 59-22-202 & 203]; Virginia [Va. Code Ann. § 3.2-4206]; West Virginia [W. Va. Code § 16-9D-3]; Wisconsin [Wis. Admin. Code Tax 9.69].

[9] An interesting recent development, however, is that some smaller/newly created NPMs have challenged a state's complimentary MSA statutes and been successful in arguing that it should not be required to make any MSA-related payments as the MSA was based in large part upon allegations against the four primary tobacco companies for collusions, conspiracy, racketeering, etc. – actions which the smaller/newer NPMs did not and were not engaged in. See e.g., Texas Small Tobacco Coalition v. Combs, No. D-1-GN-13-002414 (Travis County Ct. 2013) (finding new tax on small tobacco manufacturers under MSA unconstitutional). But see, Council of Independent Tobacco Manufacturers of America v. Minnesota, 713 N.W.2d 300 (Minn. 2006).

[10] See *supra* at note 8.

[11] 15 U.S.C. §376(a).

[12] The term "little cigars" or "filtered" cigars is generally defined as weighing less than three pounds per thousand and are the equivalent size of cigarettes. See e.g., 15 U.S.C. § 1332 (7) (defining "little cigar" as "any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (1)) and as to which one thousand units weigh not more than three pounds").

[13] See 15 U.S.C. § 376(a)(1) & (2).

[14] See 15 U.S.C. § 376(a)(1).

[15] A consumer is defined generally as "any person who purchases cigarettes or smokeless tobacco [but] does not include any person lawfully operating as a manufacturer, distributor, wholesaler or retailer of cigarettes or smokeless tobacco." 15 U.S.C. § 375(a); see also ATF, PACT Act Frequently Asked Questions (Apr. 25, 2011) (available www.atf.gov/alcohol-tobacco/, last visited Mar. 15, 2012).

[16] See 15 U.S.C. § 375(4)-(6).

[17] The PACT Act amended the Jenkins Act to add a federal filing requirement for the first time.

[18] See 15 U.S.C. § 376(a)(1).

[19] *Id.*

[20] This can be done by mailing same to the Alcohol and Tobacco Diversion Division, 99 New York Avenue, NE, Mailstop 7S-233, Washington, DC 20556 or via e-mail to PACTActregistrationinbox@atf.gov, ATF Form 5070.1, Prevent All Cigarette Trafficking (PACT) Act Registration Form and ATF Form 5070.1A, Continuation Sheet [an electronic form is available at <http://www.atf.gov/content/alcohol-and-tobacco> (last visited Apr. 7, 2014)].

[21] The ATF has not promulgated administrative regulations concerning PACT Act requirements. See ATF, PACT Act Frequently Asked Questions (Apr. 25, 2011) (available www.atf.gov/alcohol-tobacco/, last visited Mar. 15, 2012) (“ATF has deemed that the PACT Act is primarily self-executing and is providing information through open letters and this FAQ. However, ATF reserves the right to issue regulations....”).

[22] Unlike the requirement to file a statement with the federal government which was added by the PACT Act in 2010, the Jenkins Act previously required the filing of a similar statement with state tobacco tax administrators.

[23] See 15 U.S.C. § 376(a)(2). “[A]ll invoice or memoranda information relating to specific customers [should] be organized by city or town and by zip code....” *Id.*

[24] See 15 U.S.C. § 377. Also, the Cigarette Contraband Trafficking Act (“CCTA”) provides for recordkeeping requirements for shipments of cigarettes (10,000+) and smoking tobacco (500+ units). See 18 U.S.C. §§ 2341–2346; 27 CFR §§ 646.141, et seq.

[25] See 15 U.S.C. 378(a)–(e).

[26] See e.g., 26 CFR 1140.16(d); 61 Fed. Reg. 44615–44618; FDA’s Website, Frequently Asked Questions on the Passage of the Family Smoking Prevention and Tobacco Control Act (FSPTCA), *available at*

<http://www.fda.gov/TobaccoProducts/NewsEvents/ucm173174.htm>
(last visited Mar. 18, 2014).

[27] See FDA's Website, Tobacco Product Regulation, *available at* <http://www.fda.gov/TobaccoProducts/ResourcesforYou/ucm335294.htm>; Press Release: International Premium Cigar and Pipe Retailers (IPCPR) Submits Letter to OMB On regulation of Premium Cigars, *available at* <http://halfwheel.com/press-release-ipcpr-submits-letter-omb-regulation-premium-cigars>. Brady Dennis, "Cigars Expected to Be Targeted By FDA Regulation", The Washington Post, *available at* http://www.washingtonpost.com/national/health-science/cigars-expected-to-be-targeted-by-fda-regulation/2013/03/23/71105222-900e-11e2-bdea-e32ad90da239_story.html.

[28] The FTC defines an ad as "deceptive" if "it contains a statement – or omits information– that is likely to mislead consumers acting reasonably under the circumstances; and is 'material' – that is, important to a consumer's decision to buy or use the product." An ad or business practice is "unfair" if "it causes or is likely to cause substantial consumer injury which a consumer could not reasonably avoid; and it is not outweighed by the benefit to consumers." FTC Bureau of Consumer Protection website, "Advertising FAQ's: A Guide for Small Business," *available at* <http://business.ftc.gov/documents/bus35-advertising-faqs-guide-small-business> (last visited Mar. 18, 2014). See also, The Federal Trade Commission and Tobacco Fact Sheet (Feb. 2012), *available at* <http://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-ftc&tobacco-2012.pdf>.

[29] See e.g., Ohio 2014 H.B. 472 (proposing a 30 cents per pack increase over the next two years on cigarettes, and an increase in the other tobacco product excise tax rate to 41 percent in 2015 and 49 percent in 2016); Gov. Beshear's Kentucky Competes 2014 Tax Reform Plan (Feb. 4, 2014) (proposing to, among other things, increase excise tax on cigarettes to \$1 (from \$.60), increase tax rates on other tobacco products (e.g., cigars, snuff, etc.) to be in-line with cigarette tax increases, create a tax on e-cigarettes at 20% of the value, and restore the cigarette rolling paper tax).

[30] Gov. Beshear's Kentucky Competes 2014 Tax Reform Plan (Feb. 4, 2014) (proposing the creation of a tax on e-cigarettes at 20% of the value); Utah 2013 House Bill 372 (proposal to tax e-cigarettes the same as other types of tobacco products, bill defeated Mar. 11, 2013); Ohio 2013 H.B. 472 (proposing that "e-cigarettes" be considered within the term "tobacco products" for its state excise tax scheme, effective July 1, 2014); Minn. Stat § 297F.01 (including "e-cigarettes" within the term "tobacco products" and thus subject to the tobacco tax and health impact fee (35 percent each), effective August 1, 2010); New Jersey Fiscal Year 2015 State Budget plan (proposing to tax e-cigarette at the same \$2.70 per pack rate as is imposed on cigarettes within the state); 2014 Washington Senate Bill 6569 (proposing extension of state tobacco tax to e-cigarettes).

[31] Colorado Department of Revenue, Taxpayer Service Division: Sales 93: Sales Tax on Marijuana (01/14), *available at* <http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere> (last visited Apr. 6, 2014).

[32] See Henry J. Reske, States Tap Into Tobacco Vendor's Customer Lists to Pursue Back Taxes, 71 State Tax Notes 630 (Mar. 17, 2014).

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