

- Tax fight diff. now, traditional arguments don't work anymore so what do we do? - MSA impact!
- A restaurant case. Don't come, should we not fight it any more.

The New York Tax Increase



Historically, the industry has made a point of highlighting the unintended effects of large tax increases, e.g., cross-border sales and retail sales losses. In the past we have used the experience of Michigan, New Hampshire-Massachusetts, and other states, as warnings to state legislatures contemplating tax increases. We believe that New York presents a good opportunity to document such distortions.

New York is a good candidate for a variety of reasons. First, the tax is large; New York's increase will make it the highest in the country. Second, consumers can benefit from substantial savings in Border States and in Native-American reservations within New York's borders. Third, New York has a rich, well-documented history of cigarette smuggling that dates back to early 1970s. Finally, last year's series of price increases that have made cross border analysis difficult are largely finished, and should not interfere with the data.

There are other angles of the New York story to explore as well. Cigarette taxes, the gray and black market, and the settlement price increases have had a dampening effect on cigarette sales. The industry has long argued about the wisdom of pairing a declining revenue base with a program that is bound to grow over time. The New York tax increase provides an excellent opportunity to highlight this argument. The targeted nature of the health care proposal also gives the example an interesting regressivity angle.

Taking these ideas into account we have developed the following projects:

I. Cross Border Retail Survey

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The cross border retail study is similar to those done in the past (but not like the one underway in Maryland) by Price Waterhouse. We suggest using the American Economics Group, Inc., a Washington D.C. economics firm with a New York office. Their president, Charles deSeve, once worked on tax and fiscal issues for the New York legislature. They ~~have~~ done a considerable work for the industry, notably the economic impact study. "Chuck"

The study would involve the development of a baseline at 12-15 retail outlets in 6 to 10 locations. Those locations would then be monitored for 6 months for sales changes; anecdotal evidence would also be gathered to provide "color" to the report. This process might also help identify individual stories that might be newsworthy.

The study would cost \$44,000. This is less expensive than Price Waterhouse, and in line with the wholesaler approach we are using in Maryland. I have attached a copy of the proposal that Mr. deSeve developed.

II. Tax Foundation Analysis

The Tax Foundation is interested in developing a background paper on the New York tax increase. They would examine three issues:

- They would model the likely increase in cross-border sales and smuggling through their economic model and discuss the implications of this activity on government revenues;
- The study will include an examination of the "incidence" of taxation, i.e., regressivity. The study will also point out that higher taxes are not justified as a means of reducing youth smoking.
- Finally, the study will question the propriety of using a cigarette excise tax to finance health care insurance for the poor, given a booming economy and the state's access to tobacco settlement funds.

The paper would be sent to national media and national tax policymakers; copies also would be sent to Gov. Pataki and selected members of the New York legislature, and to selected legislators in other states considering such an approach. The Tax Foundation would also seek out opportunities to publish op-eds in local papers to raise local awareness of these issues.

The cost of the project is a contribution of \$15,000. The timeframe is 6-8 weeks upon receipt of funding.

III. National Taxpayers Union

The National Taxpayers Union can provide "teeth" to the arguments being made. While groups like the Tax Foundation are uncomfortable moving far afield from the tax policy arena, NTU is ideologically opposed to big government programs such as the one in New York, and is unafraid of making that known.

NTU has contacts with large numbers of affiliates and allies across the country, and can get the New York story out. In addition, NTU might serve as an effective channel to disseminate the results of the AEG study.

IV. Economist Op-Eds

The industry has often highlighted tax and economic arguments through the use of a network of university-affiliated economists. These economists write op-eds from a free

market perspective. In the past, they have written op-eds opposing FDA regulation and federal cigarette excise tax increases.

While these op-eds are normally useful, we have a few concerns about their use here that need to be addressed. First, there are no economists in the network from New York or the northeast (except someone in Boston, where publishing such articles is difficult). No New York paper has published an article on tobacco from this network, although economists have successfully placed op-eds in *The Investors Business Daily*. To the extent the goal is to serve as a reminder to legislators in New York and the surrounding region of the dangers of this type of tax policy, this vehicle will likely be ineffective.

Second, tobacco op-eds are getting increasingly harder to place in general. There needs to be a compelling tie-in to news. It is unlikely that the New York tax increase qualifies on its own, outside of New York and the northeast region. However, if the targets are carefully selected (e.g., a state will strong tobacco tax increase push), an op-ed opposing tobacco taxes and highlighting the New York experience will make sense, and will likely be more successful. Depending on the timing of the project, they might also include references to the AEG/Tax Foundation/NTU work.

These op-eds cost \$4,000 to \$5,000 each, depending on the volume of op-eds.