

Pricing Policies for Tobacco Products

DEATH ON A DISCOUNT



The price of tobacco products directly affects the level of consumption.¹ For example, the availability of cheap tobacco products increases rates of tobacco use, particularly among young adults and minors, who tend to be price-sensitive.²

The tobacco industry uses a variety of innovative pricing strategies to discourage current tobacco users from quitting, to entice new customers to purchase their products, and to reduce the effectiveness of tobacco tax increases. These strategies include discounting schemes, such as cents- or dollar-off promotions, multi-pack offers (e.g., two-for-one deals), and other price-related incentives (e.g., buy-some-get-some-free offers). Many of these retail value-added promotions are advertised and used at the point of sale or made available through coupons. The tobacco industry uses sophisticated research to apply these strategies to specific products in particular



geographic locations, and to target certain groups of people.

This resource provides a brief overview of policy approaches for addressing tobacco product discounting schemes — specifically tobacco product coupons and value-added promotions such as multi-pack offers. Given the tobacco industry's extensive use of price discounting schemes and strong evidence that price has a significant impact on overall tobacco use and

initiation, a growing number of state and local communities are considering pricing policies, in addition to taxation, as part of comprehensive tobacco control programs.³ Although some pricing strategies are relatively untested, states and many localities have broad legal authority to regulate the sale and distribution of tobacco products in their jurisdictions. If regulations are carefully drafted to focus on tobacco product pricing, retailer conduct at the point of sale, and transactions within a specific jurisdiction, these pricing laws are likely to be upheld even if they are challenged by the tobacco industry.⁴

Tobacco Product Coupons

Consumers receive tobacco product coupons in several ways. For example, they can be affixed to packs, sent by direct mail, or downloaded from the internet or an app. Coupons are often targeted to specific geographic areas (such as low socio-economic neighborhoods),⁵ or to particular demographic groups (such as youth or minorities). Studies have found, for instance, that price promotions for menthol cigarettes are more prevalent in neighborhoods with high concentrations of African American youth.⁶

One way to restrict coupons is to limit their *distribution*. Historically, this has been the most common approach taken by state and local governments. The extent of current state and local coupon distribution laws vary, but they generally are very narrow in scope. For instance, some states only prohibit tobacco coupon distribution to minors.⁷ Other states restrict coupon distribution within a certain distance of schools.⁸ Because restricting the distribution of coupons could have Commerce Clause and First Amendment implications, state and local governments should take care to consult with an attorney before they pursue this approach.

Another way for governments to restrict coupons is to regulate their *redemption*. Such laws could prohibit tobacco retailers from redeeming coupons that discount the price of cigarettes and other tobacco products, and they could make compliance with such a restriction a condition of the jurisdiction's retail tobacco licensing scheme. In January of 2012, the city of Providence, Rhode Island passed the first law to prohibit licensed retailers from redeeming coupons and multi-pack offers for tobacco products.⁹ The law amends the city's tobacco retailer licensing ordinance and punishes violators by fines or revocation of the license.¹⁰ A group of tobacco retailers, cigar manufacturers, and other tobacco product manufacturers challenged the ordinance in court, alleging among other things that it was preempted by federal law, but the court upheld the ordinance.¹¹

If local communities are concerned that they lack the authority to regulate price discounting directly, they may want to explore opportunities to enforce existing state minimum price

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laws. For example, a state's minimum price law might allow local communities to prohibit the redemption of coupons that reduce the price of cigarettes below the statutory minimum price.

Laws restricting or prohibiting the retail redemption of coupons would be more likely to affect the price of tobacco products than coupon distribution laws and, given the correlation between price and consumption, would also be more likely to have a significant public health impact. Because a coupon redemption law is limited to regulating only one aspect of a sales transaction at the local level, it may minimize the legal challenges posed by other approaches, such as an expansive state or local restriction on coupon distribution.

Retail Value-Added Promotions

Retail value-added promotions typically take the form of multi-pack offers, which involve the sale of multiple packages for a single combined price (e.g., buy-one-get-one-free offers), and cross-promotions, which involve a bonus tobacco product with the purchase of another type of tobacco product (e.g., offering a free tin of snus with the purchase of a pack of cigarettes). Such bundling can dramatically reduce the price of each item, particularly when multi-pack offers are combined with discount coupons in a single transaction.

The federal Family Smoking Prevention and Tobacco Control Act of 2009 does not regulate retail value-added offers involving free cigarettes or other tobacco products with the purchase of tobacco products. The federal law does, however, expressly preserve the authority of state

and local governments to regulate the sale or distribution of tobacco products,¹² allowing such entities to adopt laws regarding pricing and the sale of discounted tobacco products. At this time, most state laws do not address retail value-added promotions. Only a handful of localities, including Providence and New York City, have directly prohibited multi-pack offers that result in sales below the listed or non-discounted price. New York City additionally sets the minimum price for cigarettes and 20-pack little cigars at \$13.00.¹³

As with coupon restrictions, limiting retail value-added promotions, such as multi-pack discounts, could be a promising way for state and local governments to maintain higher prices for tobacco products and to close loopholes under existing law. Restricting value-added promotions could be accomplished in several ways: (1) through a stand-alone law, (2) imposed as a condition on a tobacco retailer license, or (3) included as an element of a state's minimum price law. For instance, states with minimum price laws could prohibit sales involving bonus packs of cigarettes by requiring that each item included in a combination sale meet the statutory minimum price. States and many localities could also, directly or via a minimum price law, prohibit cross-promotions that add free non-cigarette tobacco products with the purchase of cigarettes.

Conclusion

Because pricing policies for tobacco products may face legal challenges, states and local communities should have strong legal support in the pre-planning stages and all other phases of policy development. Local attorneys and tobacco control attorneys, including staff attorneys at the Public Health Law Center, can help a jurisdiction determine whether it has the legal authority to adopt a particular regulation and, if so, whether any federal statute or constitutional provision limits that authority. They can provide examples of implemented policies, share policy options, and help develop legally sound, effective, and evidence-based laws.¹⁴ If the policy is challenged in court, tobacco control lawyers can also help provide litigation support.

Other Helpful Resources

The Public Health Law Center's [website](#) includes several resources on tobacco pricing and taxation, including [Taxing E-Cigarette Products \(2024\)](#). Another helpful resource is CounterTobacco.org's [Increasing Tobacco Prices Through Non-Tax Approaches](#), which contains useful information on tobacco pricing policies.

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Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit resulting in disease and death. For more information visit: <http://www.KeepItSacred.itcmi.org>. When the word “tobacco” is used throughout this document, a commercial context is implied and intended.
- 2 Campaign for Tobacco-Free Kids, *Significant Tobacco Tax Increases Reduce Tobacco Use, Particularly Among Youth, Despite Tobacco Company Price Discounts and Promotional Efforts* (2023), <https://assets.tobaccofreekids.org/factsheets/0402.pdf>.
- 3 See Center for Public Health Systems Science et al., *Pricing Policy: A Tobacco Control Guide 2* (2014), <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-guide-pricing-policy-WashU-2014.pdf>.
- 4 See Tobacco Control Legal Consortium, *Regulating Tobacco Product Pricing: Guidelines for State and Local Governments* 4–7 (2010), <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-pricing-2010.pdf>.
- 5 See *id.* at 2.
- 6 See Sarah D. Mills et al., *Disparities in Retail Marketing for Menthol Cigarettes in the United States, 2015*, 53 HEALTH & PLACE 62 (2018); Lisa Henricksen et al., *Targeted Advertising, Promotion, and Price for Menthol Cigarettes in California High School Neighborhoods*, 14 NICOTINE & TOBACCO RESEARCH 116–21 (2012).
- 7 MD. CODE CRIM. LAW § 10-107(b)(2) (2023); TEX. HEALTH & SAFETY CODE § 161.087(a) (2019).
- 8 HAW. REV. STAT. § 328J-17 (2006).
- 9 PROVIDENCE, R.I., ORDINANCE § 14-303 (2012).
- 10 See *id.*
- 11 See Public Health Law Center, *Nat’l Ass’n of Tobacco Outlets, Inc. v. City of Providence* (2013). <https://www.publichealthlawcenter.org/litigation-tracker/national-association-tobacco-outlets-v-city-providence-us-ct-appeals-1st-circuit>.
- 12 21 U.S.C. § 387p(a)(1) (West 2013).
- 13 NEW YORK, N.Y., ORDINANCE NO. 2017/145 (2017).
- 14 See, e.g., Center for Public Health Systems Science et al., *Regulating Price Discounting in Providence, RI: Innovative Point-of-Sale Policies: Case Study #1*, at 11, 14 (2013), <http://publichealthlawcenter.org/sites/default/files/resources/SCTC-case-study-Providence-pricing-2013.pdf>.