Impact of State Preemption on Local Authority to Impose Alcohol Taxes

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As required by the Alcohol Policy 18 Conference, I/we have signed a disclosure statement and note the following conflict(s) of interest:

None
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AGENDA

1. Introduction to ChangeLab Solutions’ work
2. PSR User’s Guides
3. Local tax authority & preemption
4. Technical assistance
Healthier communities for all through better laws & policies.
Communities can take different approaches to improve health.
Creating or changing a written statement of an organizational position, decision, or course of action. Made in public, non-profit, and business sectors.
System change

Unwritten, ongoing, organizational decisions or changes that result in new activities reaching large proportions of people. Alter how the organization conducts business.
Environmental change

Changes to the built/physical, economic, social, normative, or message environments that are visual and observable.
Policy is more than just legislation
Commonalities

- A statement in writing
- Binding or some accountability
- Sets out a general approach to be applied widely
Policy offers accountability & enforcement
Policy reaches more people
Policy institutionalizes good ideas
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Alcohol PSR User’s Guides: Translating Policy to Practice

- Alcohol Outlet Density
- Commercial Host Liability
- Alcohol Taxes

www.changelabsolutions.org/cdc/alcohol-psr
Alcohol Outlet Density: An Evidence-Based Strategy

States permit local governments to regulate alcohol outlet density

Local governments use licensing and/or zoning authority to regulate alcohol outlet density

Regulating alcohol outlet density improves health & saves lives

Liquor Store

Bar

Considerations for Local Regulation of Alcohol Outlet Density as a Public Health Strategy

- Gives authority to those who know local conditions best
- Encourages local residents to engage in decision-making processes
- Supports community norms that discourage excessive drinking
- Empowers local law enforcement agencies to address problems associated with excessive alcohol use

Reduced rates of excessive alcohol consumption (including binge and underage drinking)

Fewer public nuisance activities and reduced police costs

Lower rates of violence
Commercial Host Liability: An Evidence-Based Strategy

Commercial host liability holds alcohol retailers legally responsible for injuries or harms caused by illegal service to intoxicated or underage customers.

- Commercial host liability laws adopted without major restrictions
- Alcohol retailers encouraged to comply with liquor laws
- Commercial host liability laws improve health & save lives

Considerations in Implementing Commercial Host Liability as a Public Health Strategy

- Alcohol retailers are held to the same liability standards as other retail businesses
- Alcohol-related injuries and deaths are reduced when retailers implement best practices
- Alcohol retailers are held financially responsible for negligent practices
- Injured parties are compensated by negligent alcohol retailers

Reduced rates of excessive alcohol consumption (including binge and underage drinking)
Fewer motor vehicle crashes
Lower rates of violence
Alcohol Taxes: An Evidence-Based Strategy

Federal, state, or local government enacts taxes on beer, wine, or distilled spirits

As price increases, alcohol consumption is reduced

Increased alcohol taxes improve public health & save lives

Reduced rates of excessive alcohol consumption (including binge and underage drinking)
Fewer motor vehicle crashes
Lower rates of crime and violence
Reduced rates of sexually-transmitted infections

Considerations in Implementing Alcohol Taxes as a Public Health Strategy:

- Alcohol excise taxes fall every year — in effect, a tax cut because the taxes don’t keep up with inflation
- Average cost of alcoholic beverages is low relative to other consumer goods
- Costs to society and government of excessive alcohol use far outweigh current tax revenues
- Strong public support, particularly if tax revenue is earmarked for social programs
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Effect of State Preemption on Local Authority to Impose Alcohol Taxes
What is preemption?
When the law of a higher level of government trumps the law of a lower level of government.
• Fifty-state legal analysis
• Local authority to tax
• Limits on local authority
METHODOLOGY

1. Comprehensive scan of laws granting local alcohol tax authority

2. 50-state review of state-level sales tax laws to identify local sales tax preemption

3. Reviewed state tax codes of states that allow local taxation to identify restrictions on local tax authority

4. Reviewed municipal codes of cities in states with local taxing authority to identify local taxes on alcoholic beverages
Local Tax Authority, January 2015

Local tax authority with no major restrictions
Local tax authority with one or more major restrictions
No local tax authority (state preemption)
## RESTRICTIONS ON LOCAL ALCOHOL TAXING AUTHORITY BY STATES THAT PERMIT LOCAL TAXATION, JANUARY 2015*

<table>
<thead>
<tr>
<th>State</th>
<th>Beverages that may be taxed</th>
<th>Cap on amount of tax (per gallon or ad valorem)</th>
<th>Type of retail sales that may be taxed</th>
<th>Limits on use of tax revenue</th>
<th>Limits on tax authority by jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>all</td>
<td>none</td>
<td>All</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>Alaska</td>
<td>all</td>
<td>none</td>
<td>All</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>Arkansas</td>
<td>all</td>
<td>beer &amp; wine: 10%; spirits: 14%</td>
<td>on-premises</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>Florida</td>
<td>all</td>
<td>1%</td>
<td>on-premises</td>
<td>tourism, emergency, or homeless services</td>
<td>none</td>
</tr>
<tr>
<td>Georgia</td>
<td>distilled spirits &amp; wine</td>
<td>$.83/gallon; spirits: 3%</td>
<td>All</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>Idaho</td>
<td>all</td>
<td>none</td>
<td>on-premises</td>
<td>none</td>
<td>resort cities w/ less than 10,000 population</td>
</tr>
<tr>
<td>Illinois</td>
<td>all</td>
<td>none</td>
<td>All</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>Louisiana</td>
<td>6% or less alcohol*</td>
<td>$.05/gallon (cap does not apply to New Orleans)</td>
<td>All</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>Nebraska</td>
<td>all</td>
<td>none</td>
<td>on-premises</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>New Jersey</td>
<td>all</td>
<td>3%</td>
<td>on-premises associated with tourism</td>
<td>none</td>
<td>resort cities bordering Atlantic Ocean</td>
</tr>
<tr>
<td>New York</td>
<td>beer &amp; spirits, 24% or above</td>
<td>beer: $0.12/gallon; spirits: $1/gallon</td>
<td>All</td>
<td>none</td>
<td>New York City</td>
</tr>
<tr>
<td>New Mexico</td>
<td>all</td>
<td>6%</td>
<td>All</td>
<td>education/treatment/prevention</td>
<td>McKinley County</td>
</tr>
<tr>
<td>North Dakota</td>
<td>all</td>
<td>none</td>
<td>All</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>Ohio</td>
<td>all</td>
<td>1%</td>
<td>All</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>all</td>
<td>10%</td>
<td>All</td>
<td>transit systems (Philadelphia)</td>
<td>Philadelphia, Pittsburgh</td>
</tr>
<tr>
<td>South Carolina</td>
<td>all</td>
<td>2%</td>
<td>on-premises</td>
<td>tourism-related activities</td>
<td>none</td>
</tr>
<tr>
<td>Utah</td>
<td>all</td>
<td>1%</td>
<td>restaurants</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>Vermont</td>
<td>all</td>
<td>1%</td>
<td>All</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>all</td>
<td>0.50%</td>
<td>on-premises exposition districts</td>
<td>none</td>
<td>none</td>
</tr>
</tbody>
</table>

*limitation does not apply to New Orleans
**19 STATES WITH LOCAL TAX AUTHORITY**

- 9 or 47% allow local taxes of more than 1% of retail sales and do not limit tax authority by jurisdiction (Alaska, Arizona, Arkansas, Georgia, Illinois, Louisiana, Nebraska, North Dakota, South Carolina*)

- 5 or 26% limit tax authority by jurisdiction (Idaho, New Jersey, New Mexico, New York, Pennsylvania)

- 5 or 26% have caps of 1% or less (Florida, Ohio, Utah, Vermont, Wisconsin)

* Subject to certain other state limitations identified on slide 32
TYPES OF RESTRICIONS ON TAX AUTHORITY AMONG THE STATES THAT PERMIT LOCAL TAXATION (N=19), JANUARY 2015
TYPES OF RESTRICTIONS ON TAX AUTHORITY AMONG THE STATES THAT PERMIT LOCAL TAXATION (N=19), JANUARY 2015

- Caps: 13 states
- Retailer Type: 8 states
- Jurisdiction: 5 states
- Earmarking: 4 states
- Beverage Type: 2 states
## USE OF LOCAL ALCOHOL TAXING AUTHORITY BY STATES THAT PERMIT LOCAL TAXATION, JANUARY 2015*

<table>
<thead>
<tr>
<th>State</th>
<th>Cities imposing tax</th>
<th>Tax range</th>
<th>Mean tax rate</th>
<th>Cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>2</td>
<td>3-5%</td>
<td>4.0%</td>
<td>no cap</td>
</tr>
<tr>
<td>Arizona</td>
<td>9</td>
<td>1.5-3.9%</td>
<td>2.3%</td>
<td>no cap</td>
</tr>
<tr>
<td>Arkansas</td>
<td>10</td>
<td>4-10%</td>
<td>7.0%</td>
<td>beer, wine: 10%; spirits: 14%</td>
</tr>
<tr>
<td>Georgia</td>
<td>10</td>
<td>wine: $0.60-$0.83/gal. spirits: $0.60-$0.83/gal. +3% (on-sale)</td>
<td>wine: $.81+ 3%</td>
<td>wine: $0.83/gal. spirits: $0.83/gal. + 3% (on-sale)</td>
</tr>
<tr>
<td>Illinois</td>
<td>7</td>
<td>1-2.75%</td>
<td>1.6%</td>
<td>no cap</td>
</tr>
<tr>
<td>Louisiana</td>
<td>7</td>
<td>low alcohol: $0.05/gal.</td>
<td>$.05/gal.</td>
<td>low alcohol: $0.05/gal.</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1</td>
<td>2.5%</td>
<td>2.5%</td>
<td>no cap</td>
</tr>
<tr>
<td>North Dakota</td>
<td>6</td>
<td>1-2%</td>
<td>1.3%</td>
<td>no cap</td>
</tr>
<tr>
<td>South Carolina</td>
<td>10</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
</tr>
</tbody>
</table>

* States with caps of 1% or less and with strict geographic limits on local alcohol tax authority are not included in the table. The analysis of use of local tax authority was limited to examining the 10 largest cities in those 9 states without significant restrictions on local alcohol tax authority.

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* Augusta imposes its spirits tax on whiskey only.

* In addition, Chicago has a tax rate of $0.04/gal. for beer, $0.36/gal. for wine, and $2.68/gal. for spirits. Chicago’s tax rate is calculated for wine with 12% alcohol content and for distilled spirits (spirits) with 40% alcohol content. 

* In addition, New Orleans has a tax rate of $0.05/gal. for beer, $0.05/gal. for wine, and $0.40/gal. for spirits.

* Louisiana tax is applicable to beverages 6% alcohol or lower.
LOCAL TAX AUTHORITY TAKEAWAYS

• Most states have some type of restriction on local authority to tax alcohol
• Raising local taxes on alcohol can reduce excessive alcohol consumption and related harms
• Local alcohol taxes can complement state alcohol taxes
• These funds can be used to support local prevention and treatment
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Technical Assistance

- Legal & policy TA
- Legal research
- State & local health departments & communities
Thank you!

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