

# Recent Initiatives to Control Contraband: US & NY

*2nd Bi-National Conference on Contraband*

Micah Berman, J.D.

Director, Center for Public Health and  
Tobacco Policy

New England Law | Boston

# Center for Public Health and Tobacco Policy



Tobacco Control  
Legal Consortium



# Cigarette Tax Evasion Report

Center for Public Health and  
Tobacco Policy



Cigarette Tax Evasion in New York  
January 2011

NEW ENGLAND LAW  BOSTON

NEW ENGLAND LAW  BOSTON



# NY State Tax

- June 2010: New York State increases its cigarette tax by \$1.60 per pack, to \$4.35 per pack (\$5.85 in New York City)
- At same time, legislature amends law to require tax to be paid on cigarettes sold by Native American retailers to non-Native Americans
  - Provisions to allow tribes/nations to obtain untaxed cigarettes for use by members

# NY State Tax

- Law was to go into effect in Sept. 2010, but court challenge delayed implementation
- Trial judge ruled for state, but agreed to prevent enforcement until appeal could be heard
- Even if state allowed to proceed, enforcement will be challenging

# PACT Act

- Prevent All Cigarette Trafficking Act (PACT Act) -- Signed into law in March 2010
  - NY had already prohibited shipping cigarettes to customers in the mail, but lacked authority over US mail
  - PACT Act makes cigarettes “nonmailable”



# PACT Act

- Prohibits the mailing of tobacco products unless all applicable taxes have been paid
  - *Currently subject to legal challenge*
- Increases penalties for failing to report tobacco sales (Jenkins Act) & strengthens enforcement

# Family Smoking Prevention and Tobacco Control Act

- Provided the Food & Drug Administration (FDA) with limited authority to regulate tobacco products
- Empowers FDA to address tax evasion by establishing a track/trace system, mandating recordkeeping, and other measures



# Additional Issues

- Smuggled Tobacco Prevention Act (STOP Act)
- Framework Convention on Tobacco Control

# Summary

- Courts holding up NY's enforcement of new tax law
- PACT Act provides important new tools to address online sales
- FDA Act provides broad authority, but few mandates

# Thank You

- Micah Berman, JD  
Assistant Professor  
Director, Center for Public Health and  
Tobacco Policy  
New England Law | Boston  
[www.tobaccopolicycenter.org](http://www.tobaccopolicycenter.org)  
[tobacco@nesl.edu](mailto:tobacco@nesl.edu)  
(617) 368-1465