
Preemption and Tobacco Taxation: What they are and why you should care.

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Public Health Division
Office of Disease Prevention and
Epidemiology

Today we are going to talk about ...

Pricing strategies as a tobacco control tool

- Participants will be able to articulate the role of price increases and tobacco taxes in the larger tobacco control movement

How tobacco is taxed in Oregon

- Participants will be able to describe how the different types of tobacco are taxed in Oregon

Preemption and why it matters

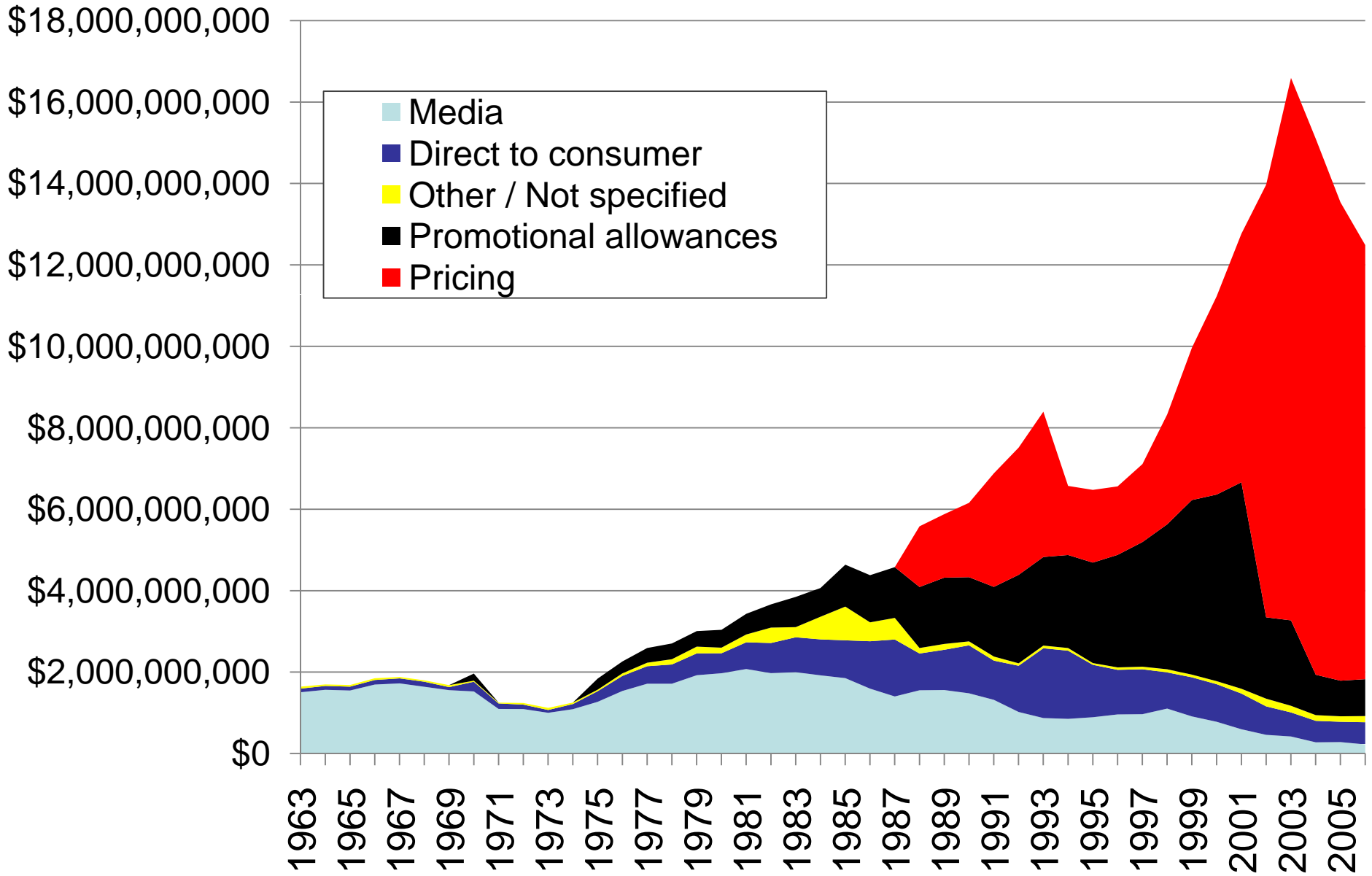
- Participants will be able to define preemption and articulate why it is important for the tobacco control and healthy communities movement.

Local action and interests

Prices are important

- Raising the price of tobacco is the most effective way to decrease consumption
- For every 10% price increase, consumption declines by 4%

Cigarette marketing expenditures, 1963 - 2006



Tobacco taxes in Oregon

- How taxes are collected
- Tax rates on different products
- Where the money goes
- Implications of tax disparities

Tobacco
manufacturers



Pay federal taxes



Sell products to
distributors

Licensed
distributors



Pay state taxes



Sell products to
retailers

Retail stores



Sell tobacco products to
consumers

Tax stamp machine



Oregon taxes are based on:

- The number of cigarettes sold
- The wholesale price of cigars (with a maximum tax per cigar)
- The wholesale price of loose smoking tobacco
- The weight of smokeless tobacco (with a minimum tax per container)

How do mills work?

- A mill is the price in \$ for 1,000 cigarettes
- 1,000 cigarettes / 20 per pack = 50 packs
- 59 mills = \$59 per 1,000 cigarettes
- $\$59 / 50 \text{ packs} = \underline{\$1.18 \text{ per pack}}$

Cigarettes and cigars

	Federal tax rate	Oregon tax rate
Cigarettes	\$1.007 / pack of 20	\$1.18 / pack of 20
Small Cigars	\$1.007 / pack of 20	65% of wholesale price
Large Cigars	52.75% of sales price, \$0.4026 max per cigar	65% of wholesale price, \$0.50 max per cigar

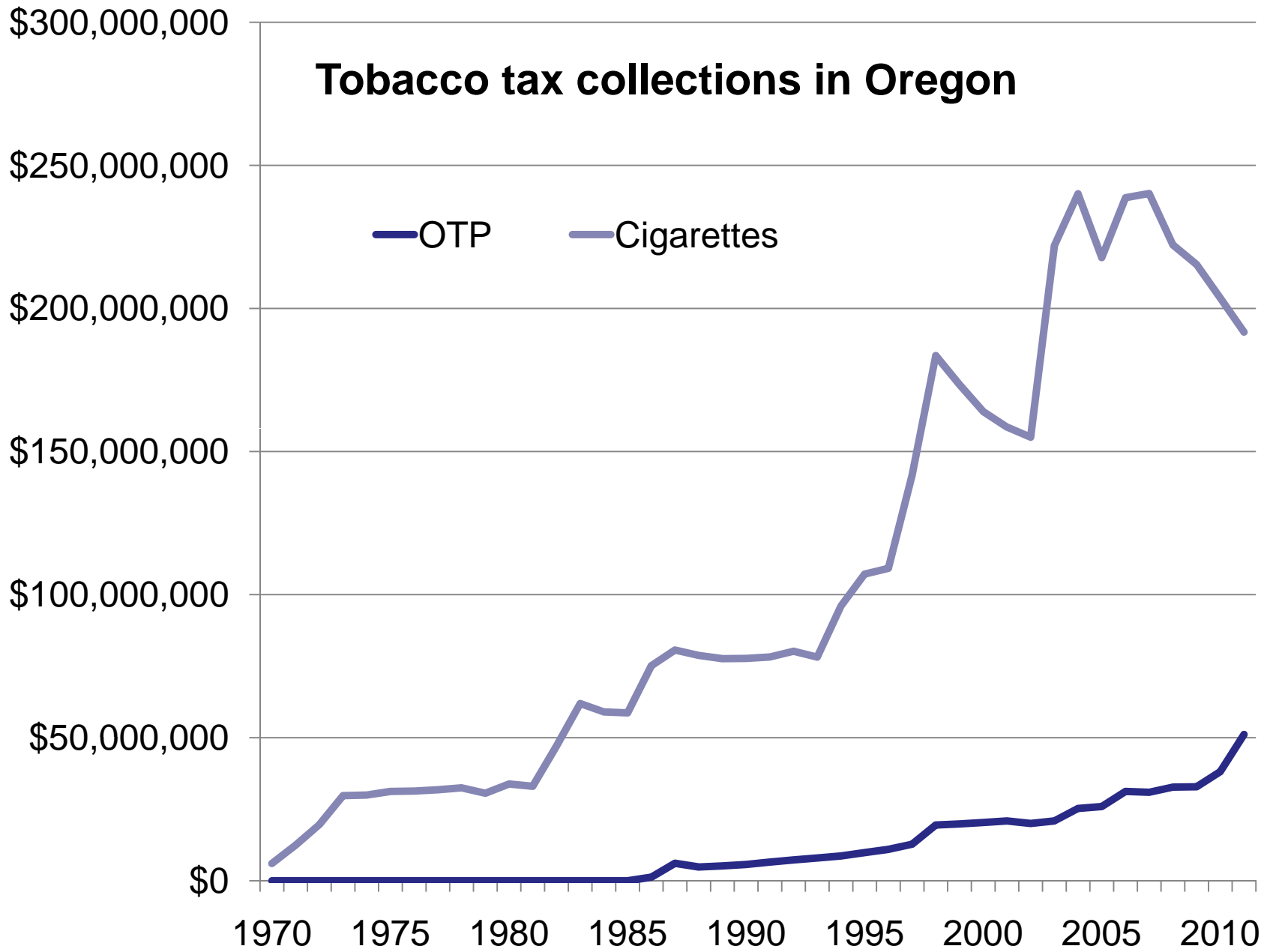
Loose smoking tobacco

	Federal tax rate	Oregon tax rate
Pipe Tobacco	\$0.177 / oz.	65% of wholesale price
Roll-your-own Tobacco	\$1.549 /oz.	

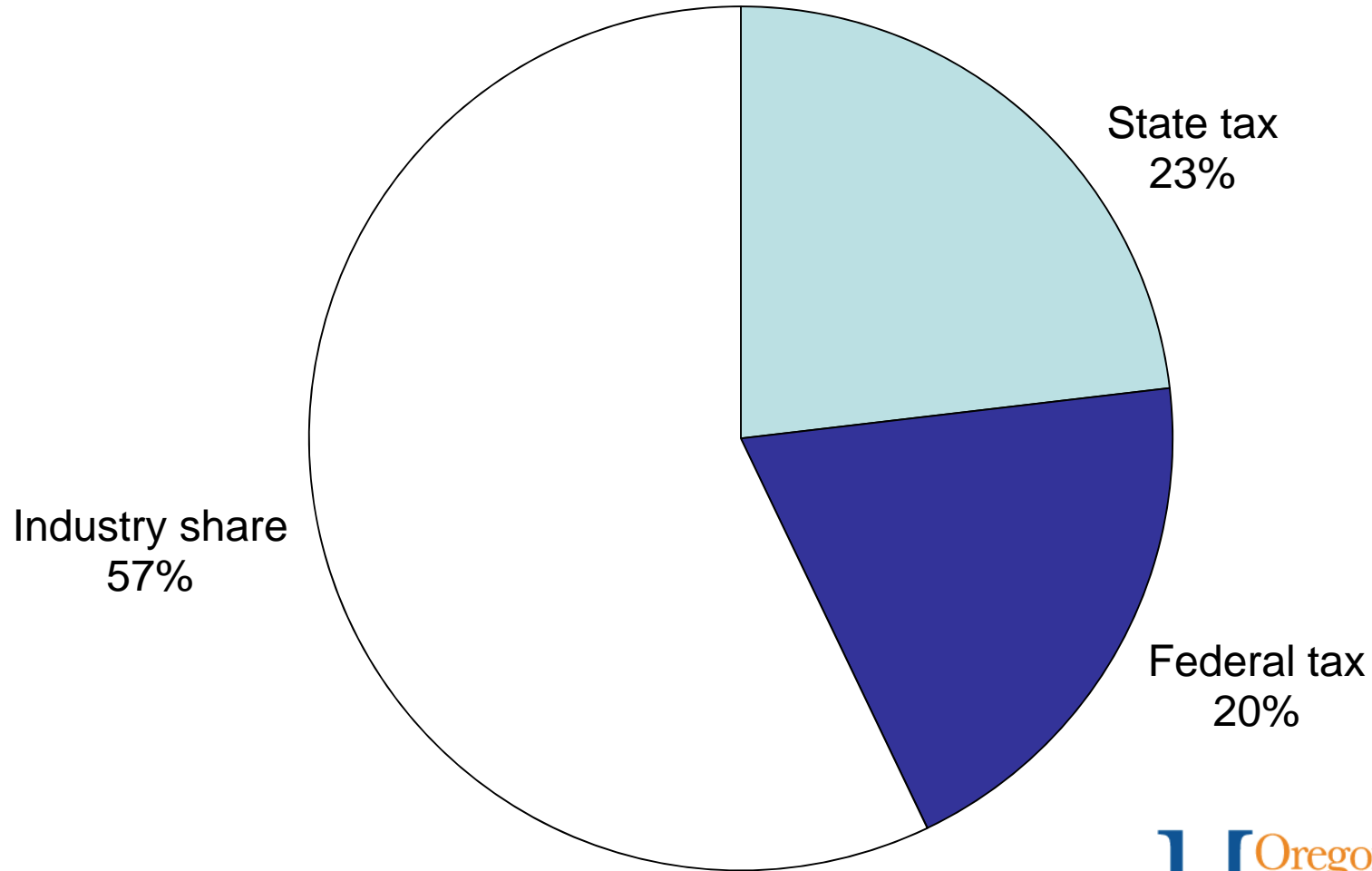
Smokeless tobacco

	Federal tax rate	Oregon tax rate
Chewing Tobacco	\$0.031 / oz.	\$1.78 / oz., minimum \$2.18 per container
Snuff	\$0.094 / oz.	

Tobacco tax collections in Oregon



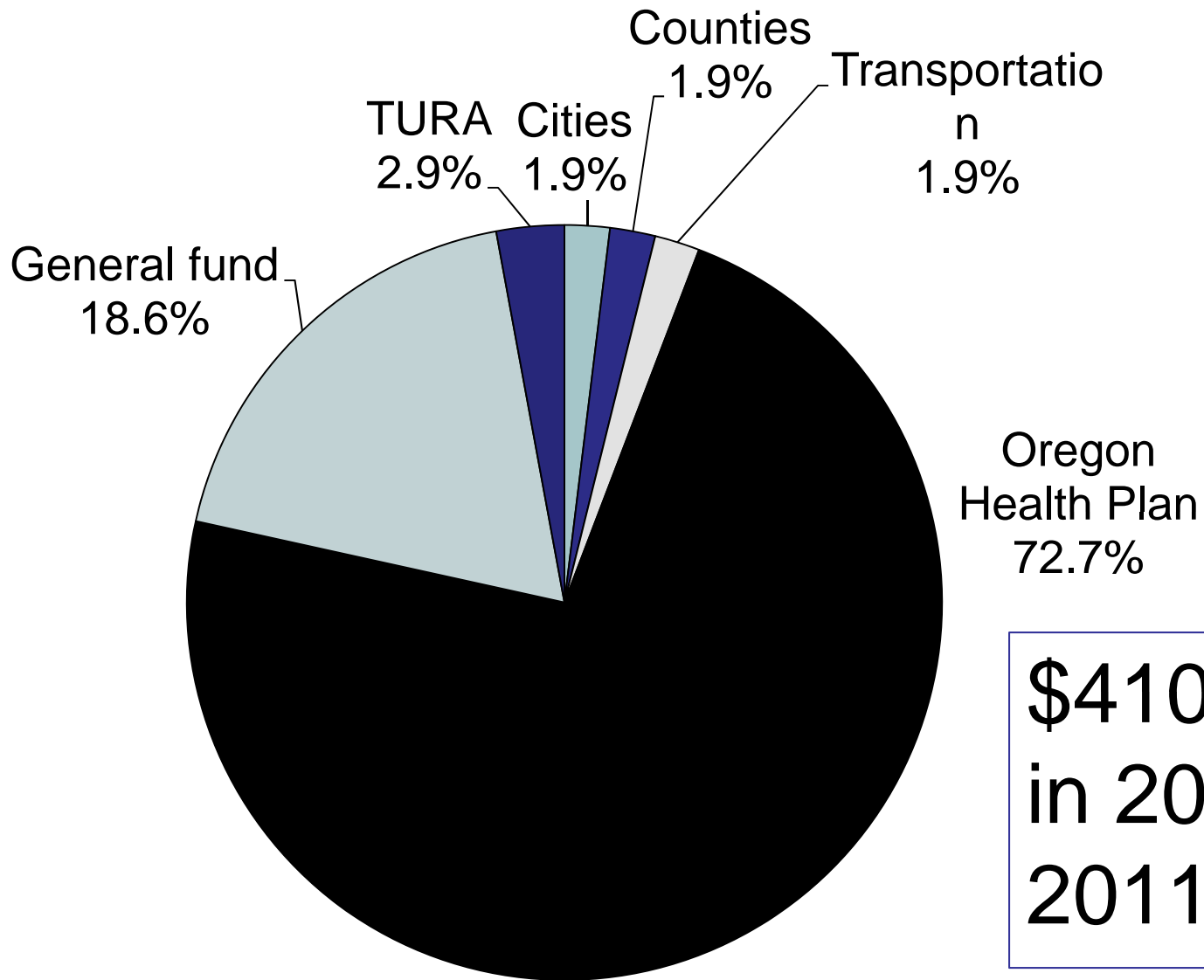
Money from cigarette sales in Oregon, 2010
\$876 million spent on 171.8 million packs



Adjustments

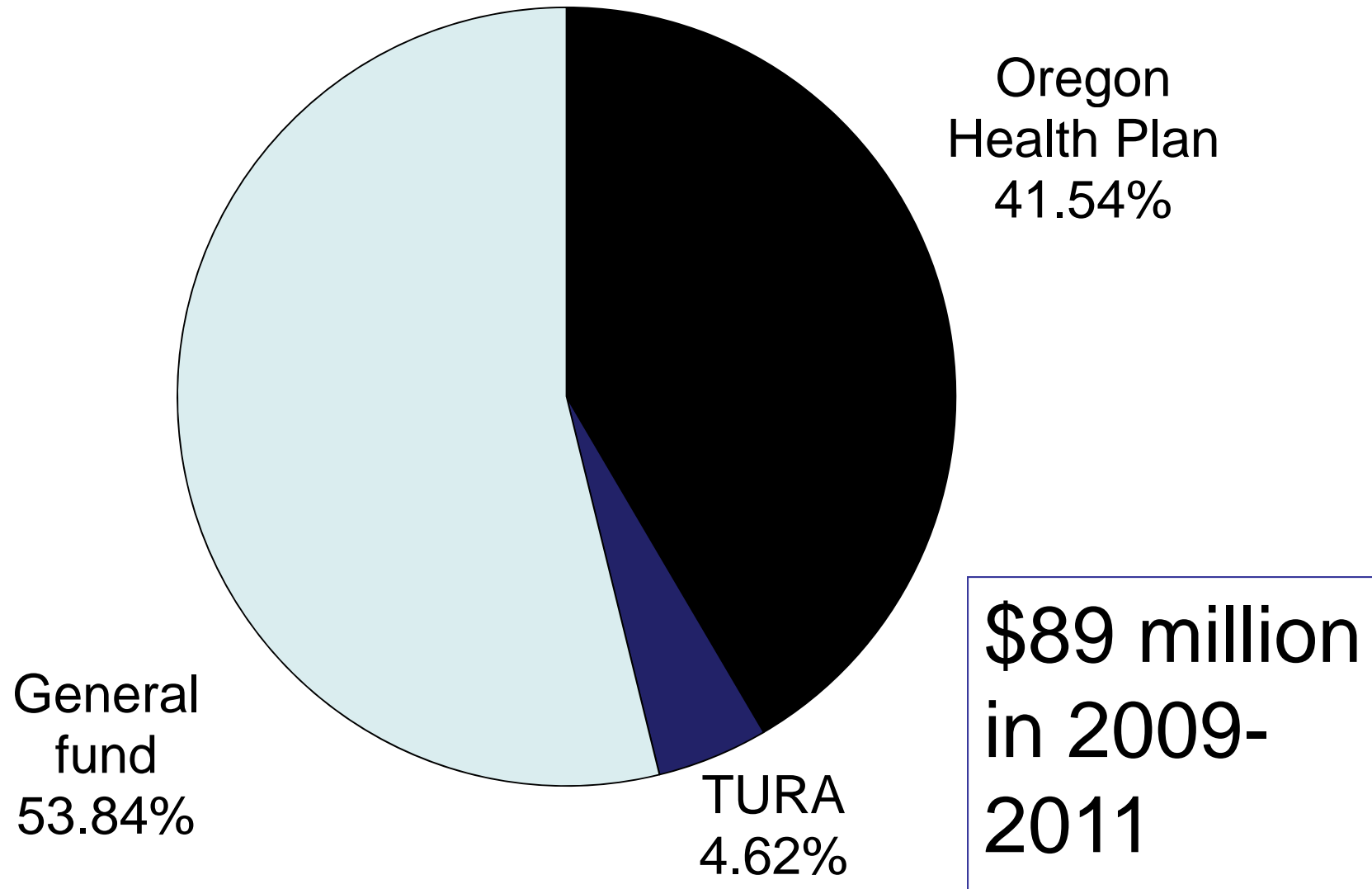
- Distributors get \$0.004 per stamp, and keep 1.5% of the OTP taxes they collect
- Department of Revenue administrative costs
- Tribal compacts

Cigarette tax distributions

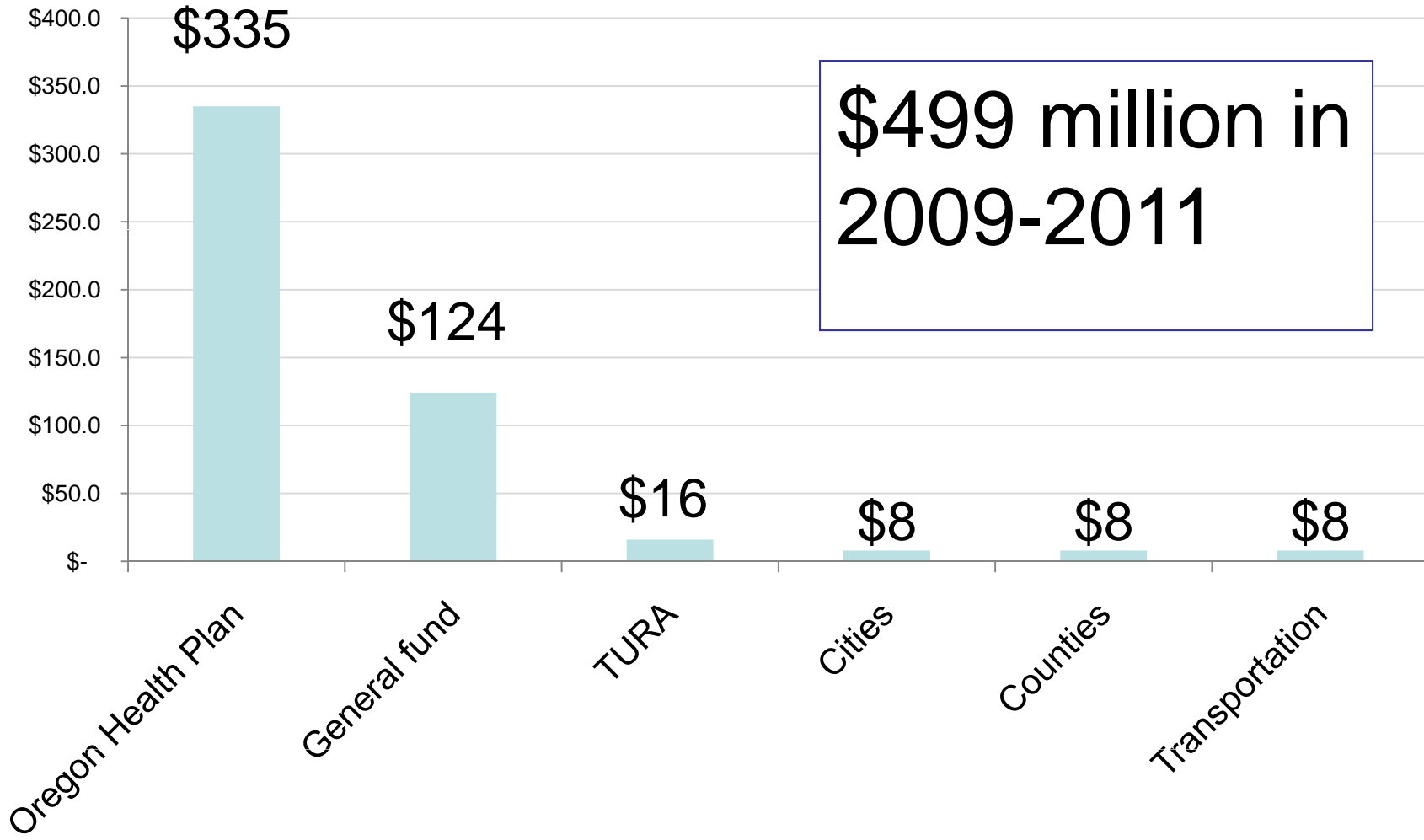


**\$410 million
in 2009-
2011**

OTP tax distributions



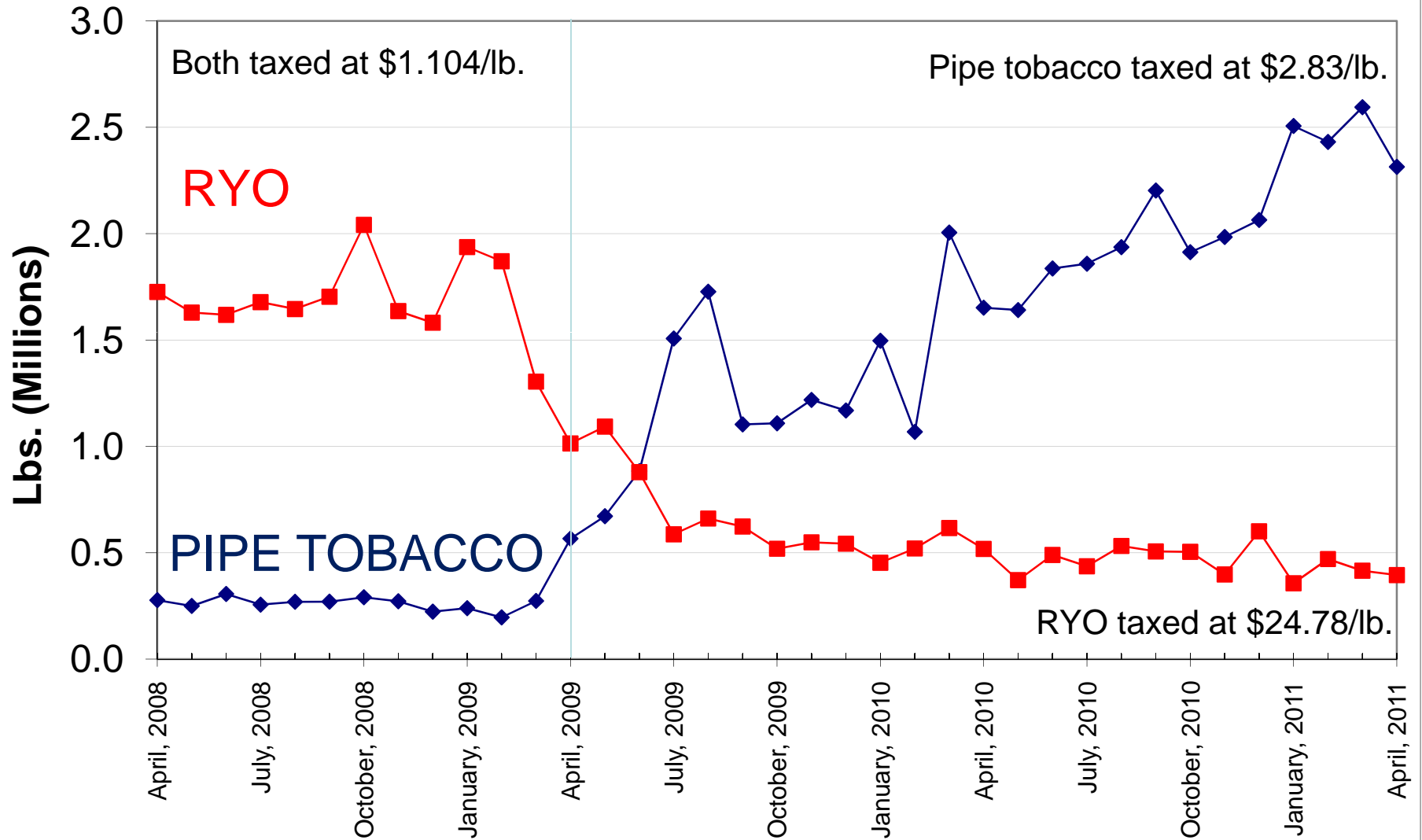
Combined cigarettes and OTP (\$ in millions)



An example

	Federal tax prior to April 2009	Federal tax after April 2009
Pipe tobacco	\$1.104 / lb.	\$2.83 / lb.
Roll-your-own tobacco	\$1.104 / lb.	\$24.78 / lb.
Difference	\$0 / lb.	\$21.95 / lb.

Taxed Pipe and Roll Your Own Tobacco for Domestic Consumption, U.S. 4/08 - 4/11



	Federal tax prior to April 2009	Federal tax after April 2009
Pipe tobacco	\$1.104 / lb.	\$2.83 / lb.
Roll-your-own tobacco	\$1.104 / lb.	\$24.78 / lb.
Difference	\$0 / lb.	\$21.95 / lb.
Difference in OR (65% tax rate)	\$0 / lb.	\$14.27 / lb.

Tobacco Tax Questions

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Public Health Division
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Oregon
Health
Authority

Preemption: What is it?

- Preemption is the invalidation of one jurisdiction's law by the law of a higher jurisdiction.
 - Federal law can preempt state law, and city and county law
 - State law can preempt city or county law

Preemption: Floor vs. Ceiling

- Floor sets the minimum standard and establishes an equal playing field.
- Ceiling sets a maximum level of regulation that states (or local governments) may not surpass.
 - Misleading language because ceiling preemption doesn't allow for less stringent standards or laws

Preemption: Express vs. Implied

- Expressed preemption explicitly states the degree to which they preempt other laws.
 - Saving clause (e.g., waivers) for governments that pass stronger laws.
- Implied preemption refers to situations where federal or state law invalidates state law without explicitly saying so, and is often determined by the courts.

Laboratories of Democracy

- “Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.
 - Louis Brandeis, Supreme Court Justice

Preemption: Players and their arguments

- Industry: argue for ceiling because it provides uniformity and predictability which will reduce costs and prevent inadvertent violations.
- State and local regulators and local public health professionals argue for local control and not to shut down the labs of democracy.

Preemption: Tricks of the trade

- Local legislation can be used to stimulate the passage of laws at a higher level.
- Legislation won't always use the term preemption, but it doesn't mean it isn't in there. Read, read and read again.
 - State uniformity, prohibit more restrict or stringent standards.

Preemption: Tricks of the trade

- Federal government can limit state and local legislation by different means.
 - Congress can tell states that it will provide certain types of funding only if states meet a particular criteria.
- It is possible, but very difficult, to modify preemptive effect of an existing statute.
 - Preemption is never to be taken lightly. Be prepared and proactive.

Take Away Messages

- The price of tobacco can either make it easy or difficult to purchase tobacco.
 - Tobacco taxes are one strategy. Have an even greater impact when revenue is dedicated to tobacco prevention and education programs that keep kids from starting to smoke, protect people from secondhand smoke and help people quit.
- Pricing matters for other public health issues as well, such as reducing consumption of sugary drinks.
 - Sugar-sweetened beverage taxes with revenue allocated to obesity prevention programs that increase access to healthful foods and beverages, decrease
 - Proportional pricing strategies
- Ceiling preemption keeps local governments from acting as the laboratories of democracy.



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