



## STATE, LOCAL & TRIBAL GOVERNMENT BENEFITS FROM THE PACT ACT

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Unlike most federal laws, a central component of the Prevent All Cigarette Trafficking Act (the PACT Act) is to give the State, local and Tribal governments new enforcement rights; and most of its provisions are designed expressly to help the States and other jurisdictions that levy tobacco taxes and suffer from illegal Internet-based tax evasion. Here are some highlights:

### ***1. The PACT Act provides the only way to reduce significantly state and other government tobacco tax losses caused by Internet sales of cigarettes and smokeless tobacco.***

The states are currently losing hundreds of millions, if not billions, of dollars each year through Internet-based tax evasion. Most states have passed laws to try to reduce Internet tobacco tax losses, and many have initiated lawsuits against Internet sellers that violate applicable federal and state laws. But state efforts to address this problem are ultimately frustrated by several problems: a) state enforcement actions against individual Internet sellers take time and money and cannot practically reach some Internet sellers (such as sellers based on Tribal lands or foreign-based Internet sellers); b) when specific illegal Internet sellers are shut down, their customers can simply shift their purchases to one of the hundreds other Internet sellers that are happy to serve them; and c) Internet sellers can overcome state efforts to block common carrier deliveries of their cigarettes by shifting to using the U.S. mails (which the states cannot regulate or restrict).\*

The PACT Act effectively addresses each of these problems, not only by requiring that all state tobacco taxes must be paid and delivered to the state prior to delivering any cigarettes or smokeless tobacco to buyers in the state but also by:

- a) making it illegal to send cigarettes or smokeless tobacco products through the U.S. mails (with some minor, controlled exceptions);
- b) establishing an enforcement mechanism that blocks in-state deliveries by common carriers for any Internet sellers that have not registered with the government and otherwise complied with the Act;†
- c) giving state attorneys general new enforcement rights; and
- d) explicitly eliminating some of the common but bogus legal defenses raised by Internet sellers when subject to state lawsuits (e.g., by establishing that deliveries of Internet-sold cigarettes or

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\* Here and throughout this factsheet, the text sometimes refers only to States but is usually equally applicable also to local or Tribal governments that have their own tobacco taxes and also lose revenues to tax-evading Internet sales of cigarettes and smokeless tobacco. Indeed, the PACT Act is careful to give states and local and Tribal governments that levy tobacco taxes the exact same enforcement rights (while also fully respecting each government's sovereignty rights).

† Most notably, the PACT Act establishes a federal list of Internet sellers operating in violation of applicable laws and prohibits common carriers and other delivery services from delivering any packages for the illegally operating Internet sellers on that list (unless they first establish that the package does not contain cigarettes or smokeless tobacco). The PACT Act also provides for state attorneys general and other law enforcement officials to put illegally operating Internet sellers on this federal "do not delivery" list.

smokeless tobacco are ordered and initiated by the Internet seller, not the consumer, and occur where the consumer takes possession, not where the delivery is initiated).

**2. The PACT Act gives State attorneys general and the chief law enforcement officials of local and Tribal governments new rights to bring enforcement actions against illegally operating Internet sellers in federal district court.**

Prior to the passage of the PACT Act, the Jenkins Act (15 USC 375 et seq.) required only that all Internet and other mail order sellers of cigarettes to register with the tax officials of those states into which they sell and deliver cigarettes and make related reports of their sales into the states. As amended by the PACT Act, the Jenkins Act pertains not only to cigarettes but to smokeless tobacco products, as well, and places additional requirements on Internet and other mail-order sellers to protect against sales to kids, ensure payment of applicable tobacco taxes, and make sure that Internet sellers that sell into jurisdiction comply with that jurisdiction's laws relating to cigarettes and smokeless tobacco that must be followed by retailers located in that jurisdiction. To increase enforcement and compliance, the PACT Act also gives State, local and Tribal governments explicit authority to enforce the Jenkins Act, as amended, against Internet sellers that violate its provisions, in federal court.

Similarly, the PACT Act gives State, local and Tribal governments the authority to bring enforcement actions in federal court against Internet sellers that violate the PACT Act by using the U.S. mails to deliver their illegally sold cigarettes or smokeless tobacco products to consumers.

In both cases, the PACT Act is very careful to make sure to make sure that these new enforcement rights do not allow state governments to bring lawsuits against Tribal governments (or vice versa) or otherwise to infringe on existing government sovereignty and immunity rights.<sup>‡</sup>

**3. The PACT Act does not reduce or restrict any remedies or enforcement rights currently available to the states.**

- The PACT Act has explicit language stating that the new enforcement rights provided by the PACT Act to State, local and Tribal governments, and all related remedies available to the State, local and Tribal governments, are “in addition to any other remedies available under Federal, State, local, Tribal, or other law” and that nothing in the PACT Act “shall be construed to expand, restrict, or otherwise modify any right of an authorized State [or local or Tribal] official to proceed in State [or local or Tribal] court, or take other enforcement actions, on the basis of an alleged violation of State [or local or Tribal] or other law.”
- Provisions in the PACT Act to address concerns raised by Indian Tribes that the existing Tribal sovereignty and immunity rights were being reduced or restricted have been carefully drafted to be entirely neutral – neither expanding or contracting the existing scope of Tribal sovereignty or immunity rights.
- Similarly, the PACT Act contains explicit language to ensure that it does not affect, amend or modify any State-Tribal agreements or compacts relating to the collection of taxes on tobacco products sold on Tribal lands.

*Campaign for Tobacco Free Kids, March 31, 2010*

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<sup>‡</sup> But the PACT Act does call for State attorneys general and local and Tribal government law enforcement officials to refer any Jenkins Act cases they cannot prosecute themselves to the U.S. Attorney General or to U.S. Attorneys, which the Act directs to take appropriate enforcement action.