

LRO Backgrounder:

A Brief History of Nebraska's Cigarette Tax

Prepared by Bernard J. Scherr, Research Analyst
Legislative Research Office
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Introduction

This LRO Backgrounder—*A Brief History of Nebraska's Cigarette Tax*—is the first in a series of reports, designed to provide legislative history and pertinent background information on issues regularly before the Legislature.

The history chronicles Nebraska's cigarette tax from its implementation in 1947 to today. The Legislative Research Office hopes the information is a useful resource as legislators and staff develop policy, research issues, and provide information to or answer questions from constituents.

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The Legislative Research Office conducts public policy and legal research for senators and staff. If you have any questions or would like additional information on Nebraska's cigarette tax or any other issue, please contact us at (402)471-2221 or visit us in Room 1201.

Nebraska's Cigarette Tax, Generally

The cigarette tax became part of Nebraska state government's revenue stream in 1947 with the passage of LB 169. The cigarette tax is an excise tax, which is “a tax on the manufacture, sale, or use of goods or on the carrying on of an occupation or activity, or a tax on the transfer of property.”¹

Currently, Nebraska's cigarette tax is 64 cents per pack of 20 cigarettes and 80 cents per pack of 25 cigarettes. The federal government also imposes a cigarette tax of \$1.01 per pack.²

Other tobacco products, such as cigars, pipe tobacco, loose cigarette tobacco, chewing tobacco, and snuff, are also taxed. Snuff is taxed at 44 cents per ounce, while other tobacco products are taxed at 20 percent of the wholesale purchase price.

The cigarette tax is paid when the wholesaler purchases the cigarette tax stamp. The wholesaler must affix a stamp to each package of cigarettes prior to selling the cigarettes to retail customers. The stamp essentially serves as a “receipt” for the taxes paid.

The cigarette tax is one of the five biggest revenue-generating miscellaneous taxes collected by the state.³ In 1962—the earliest year for which revenue figures are available—the cigarette tax generated approximately \$6.5 million; in 2010, revenue totaled almost \$63 million.⁴

Following is a brief history of Nebraska's cigarette tax. The history chronicles tax rate increases, highlights several capital construction projects financed by cigarette tax revenue, and discusses the impact of the nationwide anti-smoking campaign and other cigarette tax issues. Additional resource materials relating to the tax are included in the appendices.

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- 1 *Black's Law Dictionary, Sixth Edition*. Other Nebraska excise taxes include ethanol, motor fuel, and liquor taxes.
 - 2 While no local jurisdictions in Nebraska impose an additional cigarette tax, more than 460 local jurisdictions across the United States impose their own cigarette taxes. Plus, Nebraska state and local sales taxes are levied on the sale of cigarettes.
 - 3 The other four are (1) estate and generation-skipping transfer taxes; (2) the alcoholic beverages tax; (3) the insurance premium tax; and (4) the corporate occupation tax, “Taxes in Nebraska: Description of Five Largest Miscellaneous State Taxes,” http://www.nebraskalegislature.gov/app_rev/source/narr_miscstatetax.htm.
 - 4 A table detailing cigarette tax receipts and the number of packages taxed from 1962 through 2010 is included in Appendix A.

Cigarette Tax Rates, 1947 to 2012

With the passage of Laws 1947, LB 169, a cigarette tax of 3 cents per package of 20 cigarettes was imposed. On packages containing more than 20 cigarettes, the bill levied a tax of 3 cents for the first 20 cigarettes and an additional 3 cents for each additional 20 cigarettes or “fractional part thereof.” The tax was designated a “special privilege tax,” paid to the Director of the Department of Agriculture and Inspection, and credited to the General Fund. The Department of Revenue began receiving cigarette tax payments in 1969 via passage of LB 645.

Once established, the cigarette tax was the subject of legislation many times during the next 60-plus years. The 3-cent tax remained unchanged until 1957 when the rate was increased to 4 cents. During the 1960s, the tax was raised twice, from 4 cents to 6 cents in 1963 and from 6 cents to 8 cents in 1965.

The 1965 hike marked the first time that all cigarette tax revenue was not credited to the General Fund. With the passage of LB 26 in 1965, cigarette tax revenue was divided between the General Fund, State Recreation Road Fund, Land and Water Conservation Fund, and State Educational Television Fund. Earmarks and projects funded by cigarette tax revenue are discussed on page 3.

The tax rose gradually and consistently through the 1970s and 1980s. In 1984, a separate tax category for packages of 25 cigarettes was instituted. The 1984 tax rate on 25-unit packages was 22.5 cents. (The tax rate per cigarette was the same as 20-unit packages.)

Ultimately, the tax rate reached 34 cents in 1993, where it remained for nearly a decade. In 2002, the Legislature passed LB 1085, increasing the cigarette tax on 20-unit packs to 64 cents, an 88 percent hike. In 2003, the 64-cent tax was made permanent via enactment of LB 759 and is still the rate today.⁵

Cigarette Tax Rates in other States—Where does Nebraska rank?

In 2011, Nebraska's 64-cent per pack cigarette tax ranked 38th among the 50 states and the District of Columbia. New York claimed the top spot with a levy of \$4.35 per pack; Missouri's rate of 17 cents per pack is the country's lowest.

Among Nebraska's neighbors, only the aforementioned Missouri and Wyoming (60 cents per pack) have lower cigarette tax rates. Kansas (79 cents), Colorado (84 cents), Iowa (\$1.36), and South Dakota (\$1.53) impose higher rates.⁶

5 The tax rate on 25-unit packs also increased steadily between 1984 and 2003. A chronology of Nebraska's cigarette tax rate from 1947 to the most recent change is included in Appendix B.

6 A state-by-state list of tax rates on cigarettes is included in Appendix C.

Earmarks and Capital Construction Projects

As noted on page 2, 1965 marked the first earmark of cigarette tax revenue. At that time, revenue from the 8-cent tax was distributed as follows: (1) 0.6 cent was credited to the State Recreation Road Fund; (2) 0.7 cent was directed to the Land and Water Conservation Fund; (3) 0.7 cent was credited to the State Educational Television Fund; and (4) the remainder went into the General Fund. That formula remained in place for two years. Beginning in 1967, all cigarette tax revenue was again directed to the General Fund.⁷

The passage of LB 87 in 1971 marked a major change in the distribution of cigarette tax revenue. The legislation allocated 2.5 cents of the 13-cent tax to the University of Nebraska Field House Fund to finance the construction of a sports arena at the University of Nebraska-Lincoln. The arena—now known as Devaney Sports Center—is perhaps the best-known capital construction project financed by cigarette tax revenue. The sports center cost approximately \$13 million to build and opened in 1976.

The 1971 legislation also credited 2.5 cents of cigarette tax revenue to the State Office Building Fund for construction of the state office building in Lincoln. The remaining 8 cents was credited to the General Fund. There was a subsequent earmark in the 1970s for a state office building in Omaha.

An earmark initiated in 1983, via the passage of LB 192, tacitly recognized the connection between tobacco use and cancer. The bill credited 1 cent of cigarette tax money to the Nebraska Cancer Research Fund for purposes of cancer research; in 1993, the earmark increased to 3 cents.

Laws 1983, LB 410 continued earmarks of cigarette tax money for public postsecondary educational institutions. For 10 years, beginning July 1, 1984, more than \$1.7 million was earmarked for the University Buildings Renovation and Land Acquisition Fund and \$361,000 was directed to the State College Buildings Renovation and Land Acquisition Fund.

In 1986, LB 842 directed 4 cents of cigarette tax money to the University Facilities Construction Fund, for 10 years, beginning July 1986. The bill also directed a half cent to the University Facility Improvement Fund and 1.5 cents to the State College Facilities Improvement Fund, for 10 years, beginning July 1988.

Notable earmarks in the 1990s included funding for: (1) infrastructure redevelopment for Omaha and Lincoln; and (2) the Qwest Center (now the CenturyLink Center) in Omaha.

⁷ Information on earmarks of cigarette tax money is from Appendix B and “Cigarette Tax Rates, Allocation, and Proceeds”, Jack Rodgers, Nebraska Legislative Research Division, August 1988.

Of the current 64-cent cigarette tax, 49 cents is credited to the General Fund. Thirteen cents is earmarked as follows: (1) 1 cent for outdoor recreation; (2) 3 cents for cancer research; and (3) 7 cents for state building maintenance. Additionally, there are earmarks of \$1.5 million to the city of Omaha and \$1 million to the city of Lincoln for infrastructure development and over \$2.5 million for public safety communication.⁸

Impact of Anti-smoking Campaign and Other Issues

On January 11, 1964, the U.S. Surgeon General issued a report documenting the negative health effects of smoking, including the assertion that smoking causes cancer. The pronouncement marked a turning point regarding cigarette smoking in the United States. In 1964, 46 percent of adult Americans over the age of 18 smoked. By 2009, the percentage had shrunk to 20.6 percent.⁹

Since 1964, Americans have been subjected to a steady stream of anti-smoking messages from local, state, and national organizations. Additionally, clean air campaigns and lawsuits against the tobacco industry swept the country. The cigarette tax also played a role in anti-smoking and anti-tobacco strategies.

The cigarette tax is known as a “sin tax.” Generally, a “sin tax” is a tax on socially prescribed goods and services. (Taxes on alcohol and gambling are also called sin taxes.)

Advocates of sin taxes believe taxing a product or service beyond what consumers are willing to pay: (1) improves citizens' health and well being; (2) reduces the medical problems and eventual medical costs resulting from the targeted behavior; and (3) partially compensates government and society for the harm caused by the behavior.

Sin tax opponents counter the tax is: (1) regressive and disproportionately affects those who are less able to pay the tax; and (2) wrongly directed at personal behaviors that are not the government's business.

In Nebraska, cigarette sales have declined dramatically since 1964 when almost 161 million packs of cigarettes were sold. By 2010, total sales had declined to just over 100 million packs. However, during this same period, Nebraska's cigarette tax revenue increased from approximately \$9.2 million in 1964 to almost \$63 million in 2010.¹⁰

8 Neb. Rev. Stat. sec. 77-2602.

9 “1st Surgeon General Report: Smoking and Health”, www.tobacco.org; Statistical Abstract of the United States (2012).

10 See Appendix A.

Master Settlement Agreement

In 1998, the four largest American tobacco companies and attorneys general of 46 states entered into a Master Settlement Agreement, which settled states' lawsuits against the tobacco industry for recovery of tobacco-related, health-care costs and exempted tobacco companies from further private tort lawsuits involving tobacco use. The agreement awarded participating states more than \$206 billion over 25 years. From fiscal year 1997-1998 through fiscal year 2010-2011, Nebraska received almost \$485 million in tobacco settlement money. Theoretically, payments will continue indefinitely.

In 2011, the Legislature passed LB 590, a measure designed to assist enforcement of the agreement. The bill initiated new tobacco reporting requirements and modified tax enforcement provisions. Additionally, the bill allowed the state to negotiate cigarette-tax compacts with Indian tribal governments in Nebraska and allowed the state to modify its participation in multi-state agreements with tobacco wholesalers.

Other Issues

Three issues generally raised by cigarette tax opponents—border bleed, Internet sales, and bootlegging—do not play major roles in Nebraska.

Border bleed—driving to a neighboring state to purchase cigarettes at a lower price—is not a major problem in Nebraska because only Missouri and Wyoming have lower cigarette tax rates. The majority of Nebraska's residents do not live close to either state's borders, so what border bleed occurs is unlikely to have a substantial impact on Nebraska's cigarette tax revenue.

Internet sales and bootlegging—transporting cigarettes from states with lower cigarette taxes to sell illegally and cheaper in states with higher taxes—also are not considered to be issues in Nebraska.

Additional Resources

Materials relating to Nebraska's cigarette tax are included in the appendices. Appendix A includes a chronology from 1962 to 2010 of cigarette tax receipts and the number of packages taxed; Appendix B chronicles Nebraska's cigarette tax rates, increases, and earmarks; and Appendix C includes a list of cigarette tax rates imposed in other states.

Appendix A

Cigarette Tax

Cigarette tax is imposed on persons distributing or selling cigarettes at wholesale in Nebraska. The tax is paid when the wholesaler purchases the tax stamps. Payment of the tax is evidenced by affixing a stamp or meter impression to each package of cigarettes sold or given away.

The cigarette tax rate is 64¢ on packages containing 20 or fewer cigarettes and 80¢ on packages containing 25 cigarettes. The basic rate is 3.2¢ wper cigarette.

Table 4 – Cigarette Tax Receipts and the Number of Packages Taxed

Year	Packs of 20	Packs of 25	Number of Packages Taxed	Cigarette Tax Receipts
1962	171,639,510		171,639,510	\$6,524,449
1963	167,848,500		167,848,500	8,117,806
1964	160,830,500		160,830,500	9,179,067
1965 ¹	159,993,520		159,993,520	11,276,852
1966	156,799,880		156,799,880	11,985,845
1967	157,925,000		157,925,000	12,010,375
1968	157,482,650		157,482,650	11,974,465
1969	156,718,050		156,718,050	11,905,706
1970	160,311,890		160,311,890	12,171,433
1971	158,751,536		158,751,536	17,117,404
1972 ²	160,216,670		160,216,670	19,770,429
1973	166,876,790		166,876,790	20,553,919
1974	175,339,280		175,339,280	21,641,451
1975	179,988,280		179,988,280	22,215,027
1976	183,032,110		183,032,110	22,570,880
1977	183,027,490		183,027,490	22,517,276
1978	182,318,000		182,318,000	22,408,593
1979	181,476,000		181,476,000	22,309,681
1980	183,686,000		183,686,000	22,587,450
1981 ³	187,025,800		187,025,800	23,649,402
1982 ⁴	183,179,400		183,179,400	29,191,135
1983	168,006,600		168,006,600	28,595,286
1984 ⁵	172,548,400	684,720	173,233,120	29,415,184
1985	163,060,790	3,274,200	166,334,990	28,315,502
1986 ⁶	159,357,760	3,875,720	163,233,480	34,722,270
1987 ⁷	152,580,500	3,197,880	155,778,380	37,260,345
1988	150,679,850	2,236,000	152,915,850	39,551,353
1989	142,697,760	1,770,600	144,468,360	37,249,529
1990	144,863,710	1,401,000	146,264,710	37,680,416
1991	144,123,330	1,108,400	145,231,730	37,412,210
1992	141,710,930	894,400	142,605,330	36,534,491
1993 ⁸	137,752,500	617,626	138,370,126	39,656,428
1994	139,812,100	732,800	140,544,900	45,475,905
1995	140,483,000	636,200	141,119,200	45,799,985
1996	140,298,700	510,000	140,808,700	45,622,019
1997	137,969,700	505,500	138,475,200	45,636,583
1998	147,731,600	449,400	148,181,000	48,716,304
1999	130,014,000	315,600	130,329,600	43,077,698
2000	129,130,500	260,400	129,390,900	42,518,529
2001	126,525,000	187,200	126,712,200	41,632,726
2002	123,768,000	162,000	123,930,000	45,890,972
2003	107,404,500	181,200	107,585,700	67,712,816
2004	107,010,000	152,400	107,162,400	67,432,564
2005	106,459,500	108,000	106,567,500	66,958,401
2006	104,001,000	99,600	104,100,600	65,407,475

¹ Cigarette Tax rate increased from 6¢ to 8¢ per package on April 1, 1965.

² Cigarette Tax rate increased from 8¢ to 13¢ per package on April 28, 1971.

³ Cigarette Tax rate increased from 13¢ to 14¢ per package on August 30, 1981.

⁴ Cigarette Tax rate increased from 14¢ to 18¢ per package on May 1, 1982.

⁵ Cigarette Tax rate for packages containing more than 20 cigarettes per package changed to .9¢ per cigarette, effective August 1, 1984.

⁶ Cigarette Tax rate increased from 18¢/22.5¢ to 23¢/28.75¢ per package on March 1, 1986.

⁷ Cigarette Tax rate increased from 23¢/28.75¢ to 27¢/33.75¢ per package on July 1, 1987.

⁸ Cigarette Tax rate increased from 27¢/33.75¢ to 34¢/42.5¢ per package on July 1, 1993.

	Packs of 20	Packs of 25	Number of Packages Taxed	Cigarette Tax Receipts
2007	110,085,000	96,000	110,181,000	\$69,226,372
2008	110,781,000	94,800	110,875,800	\$69,662,829
2009	101,244,000	74,400	101,318,400	\$63,655,850
2010	100,144,500	61,200	100,205,700	\$62,954,824

Information provided by the Nebraska Department of Revenue.

Appendix B

NEBRASKA TAX RATE CHRONOLOGIES

Table 3 — Cigarette Tax

Effective Date	Tax Rate Per Pack	General Fund Portion	Capital Constr. Projects	Outdoor Rec. Cash Fund ¹	Depart. of HHS Cash Fund ²	Building Renewal Fund	Omaha Facilities Fund ³	Cash Reserve Fund
10/01/2004 ⁴	64/80.0¢	49¢	—	1¢	3¢	7¢	—	—
10/01/2002 ⁴	64/80.0	21	—	1	3	7	—	28¢
07/01/2001	34/42.50	21	2¢ ⁵	1	3	5	—	—
07/01/1997	34/42.50	21	—	1	3	7	2¢	—
07/01/1993	34/42.50	21	9	1	3	—	—	—
07/01/1991	27/33.75	16	9	1	1	—	—	—
07/01/1989	27/33.75	16 ⁶	9 ⁷	1	1	—	—	—
07/01/1988	27/33.75	16	9 ⁷	1	1	—	—	—
07/01/1987	27/33.75	18	7 ⁸	1	1	—	—	—
07/01/1986	23/28.75	14	7 ⁸	1	1	—	—	—
03/01/1986	23/28.75	18	3 ⁹	1	1	—	—	—
08/01/1984	18/22.50 ⁹	13	3 ⁹	1	1	—	—	—
07/01/1984	18	13	3 ⁹	1	1	—	—	—
07/01/1983	18	13	3	1	1	—	—	—
05/01/1982	18	13	4	1	—	—	—	—
08/30/1981	14	9	4	1	—	—	—	—
07/01/1980	13	8	4	1	—	—	—	—
03/24/1973	13	8	5	—	—	—	—	—
04/28/1971	13	8	5 ¹⁰	—	—	—	—	—
07/01/1967	8	8	—	—	—	—	—	—
04/01/1965	8 ¹¹	6	—	—	—	—	—	—
06/01/1963	6	6	—	—	—	—	—	—
09/20/1957	4	4	—	—	—	—	—	—
07/01/1947	3	3	—	—	—	—	—	—

¹ Beginning July 1, 1980, 1 cent was deposited to the Nebraska Outdoor Recreation Development Cash Fund.

² For the period July 1, 1983 through June 30, 1991, 1 cent was deposited to the Nebraska Cancer Research Fund for allocation to the Eppley Institute, the Cancer Registry, and research contracts. Effective July 1, 1993, the legislature increased the tax rate by 7 cents (5 cents to be deposited in the General Fund). The remaining 2 cents was added to the 1 cent and was allocated through research contracts and grants to the University of Nebraska Medical Center and Creighton University Medical School for cancer research.

³ Beginning July 1, 1989 through July 1, 2009, \$4.5 million is allocated each year to the Municipal Infrastructure Redevelopment Fund.

Beginning July 1, 1993, \$3.75 million and for each fiscal year from July 1, 1994 through Fiscal Year 2008/09, \$3 million was allocated to the Fund.

Beginning July 1, 1995, the equivalent of 2 cents was allocated to the City of Omaha Public Events Facility Fund.

Beginning July 1, 2001, this 2 cents equivalent was a fiscal year payment of \$1 million to the City of Primary Class Development Fund (Lincoln) and \$1.5 million to the City of the Metropolitan Class Development Fund (Omaha).

⁴ Beginning October 1, 2002, the tax rate increased to 64 cents per package of cigarettes containing 1 to 20 cigarettes and 80 cents per package containing 25 cigarettes (LB 1085). For a two-year period, 28 cents of the income is deposited in the Cash Reserve Fund.

NEBRASKA TAX RATE CHRONOLOGIES

Table 3 — Cigarette Tax (Continued)

⁵ Beginning July 1, 2001, this 2 cents portion was deposited into the Information Technology Infrastructure Fund.

⁶ The 16 cents portion deposited to the General Fund was reduced. Beginning July 1, 1989 through July 1, 2009, \$4.5 million is allocated each year, which is deposited to the Municipal Infrastructure Redevelopment Fund. This was reduced to \$3 million effective July 1, 1994.

⁷ Effective July 1, 1986 through July 1, 1996, the equivalent of 4 cents went to the University Facilities Construction Fund, and effective July 1, 1984 through June 30, 1994, \$1,765,153 per year was placed in the University Buildings Renovation and Land Acquisition Fund, and \$361,222 per year went to the State College Building Renovation and Land Acquisition Fund.

Beginning July 1, 1988 through July 1, 1998, an equivalent 0.5 cent went to the University Facility Improvement Fund, a 1.5 cents equivalent went to the State College Facilities Improvement Fund, and the remainder to Nebraska Capital Construction Fund. Beginning July 1, 1994 through July 1, 1997, \$2,806,270 was placed in the University Facilities Fund and \$1,205,098 was placed in the State College Facility Fund.

⁸ Beginning July 1, 1989 through July 1, 1993, \$4.5 million was placed each year in the Municipal Infrastructure Redevelopment Fund.

Beginning fiscal year July 1, 1993, \$3.75 million, and for each fiscal year from July 1, 1994, through Fiscal Year 2008/09, \$3 million was allocated to the Fund.

Beginning July 1, 1995 the equivalent of 2 cents is allocated to the City of Omaha Public Events Facility Fund.

⁹ The Legislature authorized the sale of cigarettes in packages containing 25 cigarettes. The tax remains at 0.9 cent per cigarette.

For fiscal years 1995/96 and 1996/97, \$4,189,242 was allocated to the Secure Youth Confinement Facility Fund.

¹⁰ A 2.5 cents equivalent went to the University of Nebraska at Lincoln Field House Fund and a 2.5 cents equivalent went to the State Office Building Fund.

¹¹ A 0.6 cent equivalent went to State Recreation Road Fund, a 0.7 cent equivalent went to Land and Water Conservation Fund, and a 0.7 cent equivalent went to State Educational Television Fund.

Appendix C

STATE EXCISE TAX RATES ON CIGARETTES
(January 1, 2011)

STATE	TAX RATE (¢ per pack)	RANK	STATE	TAX RATE (¢ per pack)	RANK
Alabama (a)	42.5	47	Nebraska	64	38
Alaska	200	11	Nevada	80	35
Arizona	200	11	New Hampshire	178	16
Arkansas	115	29	New Jersey	270	6
California	87	33	New Mexico	166	19
Colorado	84	34	New York (a)	435	1
Connecticut	300	4	North Carolina	45	45
Delaware	160	20	North Dakota	44	46
Florida (b)	133.9	25	Ohio	125	26
Georgia	37	48	Oklahoma	103	30
Hawaii (c)	300	4	Oregon	118	28
Idaho	57	42	Pennsylvania	160	20
Illinois (a)	98	32	Rhode Island	346	2
Indiana	99.5	31	South Carolina	57	42
Iowa	136	24	South Dakota	153	22
Kansas	79	36	Tennessee (a) (e)	62	39
Kentucky (d)	60	40	Texas	141	23
Louisiana	36	49	Utah	170	17
Maine	200	11	Vermont	224	10
Maryland	200	11	Virginia (a)	30	50
Massachusetts	251	8	Washington	302.5	3
Michigan	200	11	West Virginia	55	44
Minnesota (e)	123	27	Wisconsin	252	7
Mississippi	68	37	Wyoming	60	40
Missouri (a)	17	51			
Montana	170	17	Dist. of Columbia	250	9
			U. S. Median	125	

Source: Compiled by FTA from state sources.

(a) Counties and cities may impose an additional tax on a pack of cigarettes: in Alabama, 1¢ to 6¢; Illinois, 10¢ to 15¢; Missouri, 4¢ to 7¢; New York City, \$1.50; Tennessee, 1¢; and Virginia, 2¢ to 15¢.

(b) Florida's rate includes a surcharge of \$1 per pack.

(c) Hawaii's tax rate is scheduled to rise to \$3.20 per pack effective July 1, 2011.

(d) Dealers pay an additional enforcement and administrative fee of 0.1¢ per pack in Kentucky and 0.05¢ in Tennessee.

(e) In addition, Minnesota imposes an in lieu cigarette sales tax determined annually by the Department.

The current rate is 34.6¢ through July 31, 2011.