Violence Taxes: New Way to Recoup and Prevent the Costs of Gun Violence? Or New Method to Destroy Business and Competitiveness?

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Violence Taxes: New Way to Recoup and Prevent the Costs of Gun Violence?  
Or New Method to Destroy Business and Competitiveness?

Written by: Joseph R. Buoscio Jr.*

I. INTRODUCTION TO VIOLENCE TAXES

Growing up in a second generation Italian-American household has taught me about many important things in life, like family and food. It also taught me the importance of being self-reliant and showed me the sheer beauty of producing your own goods and living off the land. Anything from homemade pasta, jams, jellies, pickles, breads, wines, beer, and, yes, hunting and gathering wild game and fish. To many of us, growing up with firearms was a lot like growing up with tools in the garage. Guns were just another tool with a use, very akin to a fishing rod or a socket wrench set. Based on personal experience, most young Americans are introduced to firearms while learning to hunt. The beauty of hunting your own game is in the pursuit. It is this spirit of wild pursuit that brings many of us back, day after day, during the hunting seasons.

There is no other explanation why anyone in their right mind would get up at 3:00 a.m. to go out wading through freezing cold riverbeds or woodland brush in late December or January. It was not until the 1970s that America’s preeminent firearm rights group, the National Rifle Association (NRA), shifted its focus away from the “technicalities of firearms” to the “more general focus of self-defense and recreational use of firearms.”1 Like many outdoorsmen I have met and

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1. Jamie Tarabay, *Hunters: Gun Rights Have Nothing to Do with Hunting*, Al Jazeera AM. (June 18, 2014, 5:00 AM), http://america.aljazeera.com/articles/2014/6/18/hunters-gun-rightshave-nothingtodowithhunting.html (This is in direct contrast to the view of firearms as a utilitarian tool – used for harvesting game.).
conversed with, I do not concern myself with the various “focuses” that the NRA and other gun groups place on the use of firearms. To me, firearms have many different overlapping uses that we embrace and respect. Guns are hunting guns, which include various types and gauges of shotguns used for upland, waterfowl, and small game hunting or self-defense guns, which usually stay tucked away with the genuine hope they never see any use.

Unfortunately, growing up with firearms also meant seeing the genuine horror inflicted when the wrong types of people get their hands on weapons. The 1999 Columbine High School Shooting, the Aurora Colorado movie theater shooting, the Sandy Hook Elementary School Shooting, the Charleston Baptist Church shooting, the Oregon college shooting, and San Bernardino still brand themselves in the minds of many Americans as examples of why we, as a society, need more enhanced gun control. The political responses have been numerous: from a federal ban on all assault rifles to reinstating the precisely expired 1994 federal ban on assault weapons; lawmakers have been racking their brains on the numerous ways to curb, prevent, and stop mass shootings. President Obama has, unsuccessfully, even proposed using executive action through the Bureau of Alcohol, Tobacco, and Firearms to ban the sale of high velocity sporting ammunition like the 5.56x45mm (.223 Remington), in a backdoor attempt to make sporting rifles like the Armalite 15 (AR-15) de-facto unavailable. In direct contrast to these numerous “macro-national” ways to control gun ownership, one of the recently emerging trends to address gun violence is entirely local in nature. This new emerging trend is in local county or municipal “violence” taxes.

The two jurisdictions at the forefront of this new genre of taxes are Cook County, Illinois and Seattle, Washington. The basic rationale behind Cook County’s violence tax legislation is that county funded hospitals, like Stroger Hospital, spend on average $52,000 per gunshot wound victim, so the new tax is a way to recoup the societal costs of

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gun violence. In Seattle’s case, “[t]he revenue proceeds from the gun violence tax would be dedicated to prevention programs and research intended to reduce the burden of gun violence on Seattle residents and neighborhoods.” This Note seeks to analyze the growing trend of local counties and municipalities in imposing “violence” taxes on the sales of firearms within their jurisdictions and interpret the effect these taxes have on local small business gun shops within their borders, as part of a broader microeconomic trend. The first section delves into the background of sales tax in general and goes on to introduce the taxation of firearms. The latter half analyzes the malevolent consequences this tax imposes on small business gun shop owners and the broader implications this tax may have if this trend gains traction.

II. BACKGROUND ON SALES, EXCISE, AND FIREARM TAXES

Taxation has been a prominent, hot button issue in America since its founding. Cries of “no taxation without representation” echoed throughout the American frontier well before the shot “that was heard around the world” started the American Revolution against the British Crown. Taxation is a lawful, constitutional means of governments to extract funding through its people to finance its operations. “The government uses the tax code to creative [sic] incentives for a number of personal choices that cannot be mandated directly, such as

5. See President Preckwinkle Highlights County’s Firearm Tax, COOK COUNTY GOV’t (Apr. 1, 2013), https://www.cookcountyil.gov/news/president-preckwinkle-highlights-county%E2%80%99s-firearm-tax (last visited Jan. 17, 2017); see also Seattle, Wash., Ordinance 124833 (Aug. 21, 2015), http://clerk.seattle.gov/~legislativeItems/Ordinances/Ord_124833.pdf (“WHEREAS, in 2014 alone, the direct medical costs of treating 253 gunshot wound victims at Harborview Medical Center, the regional trauma center for the Pacific Northwest, reached more than $17 million, or approximately $68,000 per gunshot victim.”).


7. See generally May 17, 1769: Washington Criticizes “Taxation Without Representation,” HISTORY.COM (2009), http://www.history.com/this-day-in-history/washington-criticizes-taxation-without-representation (last visited Dec. 27, 2016) (History Channel marks May 17 as the 246th anniversary of the time that George Washington criticized taxation without representation – one of the prominent, fundamental reasons the thirteen American colonies rebelled against the English Crown and founded these United States of America).

8. The phrase “shot heard round the world” is attributed to Ralph Waldo Emerson who used it in his 1837 poem “Concord Hymn” to commemorate the beginning of the Revolutionary War. This phrase is also used to refer to other significant historic events, including the killing of Franz Ferdinand that began World War I. See, e.g., Elizabeth Nix, What was the “Shot Heard Round the World”? HISTORY.COM (Jan. 22, 2015), http://www.history.com/news/ask-history/what-was-the-shot-heard-round-the-world.

9. U.S. CONST. amend. XVI.
marriage, energy-efficient car and home purchases, charitable giving, and saving for retirement.”

Taxation of all forms has been around since the beginning of man. Jesus of Nazareth, according to New Testament biblical text, even shouted, “Render . . . unto Caesar the things which be Caesar’s, and unto God the things which be God’s.”

A sales tax is essentially a tax on revenue. It is a flat rate that grows in proportion to the amount of goods bought in a given setting. A good example is state sales tax that “is levied by the taxing jurisdiction on the sale or lease of goods and services.” When buying groceries at the local grocer, for example, a flat percentage sales tax is applied to the final bill of sale. That proportion is passed on to the customer as an additional charge. This flat percentage sales tax varies by state and municipality. For example, Illinois has a 6.25% state sales tax; in addition, Cook County, the county encompassing the City of Chicago, has a 4% sales tax (as of July 2015), bringing a cumulative sales tax to 10.25%, one of the highest in the country. As for state sales tax excluding local and municipal tax rates, the range is anywhere from 0% to 7.5%. “Sales taxes are just one part of an overall tax structure and should be considered in context.”

For example, Washington state has high sales taxes but no income tax; Oregon has no sales tax but high income taxes. “While many factors influence business location and investment decisions, sales taxes are within policymakers’ control that can have immediate impacts.”

Like sales tax, excise tax also has an important role to play in a country’s life. “The excise tax, in particular, can be a powerful tool to shape social policy.” An excise tax is “[t]ypically a tax on specific

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10. Asha Rangappa, *The Cost of Freedom: Using the Tax Power to Limit Personal Arsenals*, 32 YALE L. POL’Y REV. INTER ALIA 17, 19 (2013) (showing and outlining some of the ways the government can use its constitutionally given taxing power to push the citizenry to do something they normally couldn’t get them to do due to limited federal power).

11. *Mark* 12:17 (referring to the time Jesus lost his temper at the temple in Jerusalem when he observed the Jewish people using the temple as a market place rather than a place of worship).


16. *Id.*

17. *Id.*

18. *Id.*

goods.”

“[F]ederal excise tax has been a favored way to raise revenue and/or discourage the purchase of specific kinds of items since the [Supreme] Court first upheld an excise tax levied on carriages – then a luxury vehicle – in 1796.” As a result, “[t]he reach of excise taxes now extends beyond (modern) luxury automobiles to alcohol, gasoline, tires, airline tickets, coal, and insurance policies issued by foreign companies, among other items.”

“Currently, manufacturers pay a federal excise tax of 10% on handguns and 11% on long guns, some or all of which is passed onto the consumer in the price paid for the weapon.”

“First imposed on February 25, 1919, Section 4181 [Firearm and Ammunition Excise Tax (FAET)] of the Internal Revenue Code imposes an excise tax on imported firearms and ammunition when the importer sells or uses the firearms or ammunition.”

“A tax if [sic] 10 percent of the sales price is imposed on pistols and revolvers, and a tax of eleven percent of the sales price is imposed on other portable weapons (e.g., rifles and shotguns) and ammunition.”

“The excise tax is not imposed again unless the firearms and ammunition are further manufactured.”

As previously stated, excise taxes on firearms have been around for a very long period of time and excise taxes as a concept have been around even longer. The new emerging trend of “gun violence taxes” provides another layer of taxation, and, by extension, another layer of government bureaucracy. Thereby, violence taxes could have many unintended or, alternatively, very intended consequences that drive business customers away, hurt local business owners, and cost the county or municipality valuable tax dollars and opportunity cost.

III. INTRODUCING THE TAXES

Currently, three jurisdictions have enacted or are about to enact various versions of a violence tax. The first one was Cook County,
Illinois. Cook County consists of the City of Chicago and its surrounding suburbs. Under the leadership of County Board President, Toni Preckwinkle, Cook County’s violence tax was proposed in October 2012 and officially enacted in April 2013. This tax provides for a $25 fee on any firearm purchased within the County. It is important to understand that this $25 fee is in addition to regular sales tax.

The City of Seattle, Washington followed Cook County’s trail-blazing lead in passing and enacting their own version of a gun violence tax. Seattle’s new gun violence tax, passed in August 2015, is scheduled to take effect on January 1, 2016. Similar to Cook County’s rationale in passing its respective tax, the City of Seattle states in its legislation’s text that “in 2014 alone, the direct medical costs of treating 253 gunshot wound victims at Harborview Medical Center, the regional trauma center for the Pacific Northwest, reached more than $17 million, or approximately $68,000 per gunshot victim.” Unlike Cook County’s Firearm Tax Ordinance, however, Seattle plans on using the proceeds of their tax, not only to defray the alleged societal costs of gun ownership within its borders, but also to provide their local government with the funds to pay for basic gun safety research and prevention. Also unlike Cook County, Seattle included within their tax a per unit tax on ammunition. The tax rate imposed is “$.02 per round of ammunition that contains a single projectile that measures .22 caliber or less sold at retail and $.05 per round of ammunition for


30. COOK COUNTY, ILL., CODE OF ORDINANCES ch. 74, art. XX, § 74-668 (2016), https://www.municode.com/library/il/cook_county/codes/code_of_ordinances?nodeId=PTIGEOR_CH74TA_ARTXXFITA (The relevant section reads: “A tax is hereby imposed on the retail purchase of a firearm as defined in this Article in the amount of $25.00 for each firearm purchased.”).

31. Id. (The relevant section reads: “A tax is hereby imposed on the retail purchase of a firearm as defined in this Article in the amount of $25.00 for each firearm purchased.”).

all other ammunition sold at retail.”

Notably, almost all defensive ammunition used by law enforcement and citizens alike contain projectiles that measure far above .22 caliber. Also, in contrast to Cook County’s ordinance, which is rather vague, Seattle’s ordinance, on its face, taxes persons engaging “within the City in the business of making retail sales of firearms and ammunition.” Thus, Seattle is taxing the businesses, not necessarily the purchaser. However, this distinction is meaningless, as businesses will just pass on this new tax to the end consumer through higher prices. It is also important to note that Seattle’s gun violence ordinance, contrary to Cook County’s, provides gun sellers with the ability to “deduct from the measure of the tax all firearms or ammunition that the taxpayer delivers to the buyer or buyer’s representative at a location outside of the State of Washington.”

In other words, a Seattle-based gun store can sell tax-free to buyers outside of the taxed jurisdiction. Both Cook County and Seattle’s respective gun violence taxes do provide exemptions for sales to offices, divisions, or agencies of the United States and state and county agencies, such as police forces.

In addition to Cook County and Seattle, a third jurisdiction is courting the idea of imposing a firearms tax ordinance. The City of Los Angeles, California is the newest to propose taxation of firearms and ammunition. While still in its infancy, the Los Angeles firearm tax seeks to impose a surcharge on each firearm sold as well as a per unit ammunition tax — very similar to the Seattle ordinance.

37. Id. § 5.50.030(B).

38. See generally What Is Caliber? Bullet Sizes Explained, Firearms Guide, http://www.thefirearmsguide/ammo/what-is-caliber (last visited Nov. 24, 2016) (Caliber refers to the diameter, in inches, of the bullet. The bullet is the actual projectile that leaves the barrel of the firearm upon firing; it is not the cartridge casing. Thus, a .22 caliber bullet is a bullet that is .22 inches in diameter. Caliber, like gauge, is part of the imperial system of measurements, whereas millimeter is used in European created cartridges. The 9mm Parabellum cartridge, a very popular self defense cartridge used by law enforcement, citizens, and even our military, as well as every NATO country’s armed forces, is a German round; it converts to .357 caliber.).


40. This is a fairly common and logical business practice: when a business’s costs go up, the customer’s price goes up, or the business loses money — one of those things has to yield.


43. Id.
IV. ANALYSIS OF TAX LAWS

A. Violence taxes erode Competitive Pricing Structures by making it unnecessarily expensive to sell firearms

One of the major effects of directly targeting a specific, popular commodity, like firearms, for local taxation is the tax’s effect on competitive pricing structures. When there are large, inconsistent pricing structures for various commodities, the tenets of supply and demand kick in, prompting consumers to shop for the best deal. To better illustrate the implication these taxes have on firearms, it is important to explain the basic principles of supply and demand.

Microeconomic theory instructs that a product’s demand curve shows how many buyers of a product want to buy at each possible price, holding fixed all other factors that affect demand.\footnote{Bernheim and Whinston’s theoretical corn market example above, at a price of $7.50 a bushel, zero bushels of corn are demanded. As we slide down the demand curve, consumer’s attitudes change in regard to the prices. “The higher the price, the less corn consumers and firms want to buy.”\footnote{Bernheim & Whinston, supra note 44, at 26.} This is intuitive because “when the price is higher,}

Microeconomic theory instructs that a product’s demand curve shows how many buyers of a product want to buy at each possible price, holding fixed all other factors that affect demand.\footnote{B. DOUGLAS BERNHEIM & MICHAEL WHINSTON, MICROECONOMICS 26 (2008).} The demand curve slopes downward, as seen in the Demand Curve A curve below.\footnote{Id. at 27.}

Price and quantity demanded\footnote{Quantity demanded is simply the x axis of the graph – it denotes the amount of the good demanded at various price levels.} share an inverse relationship. In Bernheim and Whinston’s theoretical corn market example above, at a price of $7.50 a bushel, zero bushels of corn are demanded. As we slide down the demand curve, consumer’s attitudes change in regard to the prices. “The higher the price, the less corn consumers and firms want to buy.”\footnote{Id. at 27.} This is intuitive because “when the price is higher,
buying a product is less attractive than when the price is lower.” 48 “As a result, some potential purchasers will decide to spend their money on other products.” 49 “A change in one of these other factors [besides price] will cause the demand curve to shift.” 50 as shown in Demand Curve B.

The supply curve is the other part of the analysis. “A product’s supply curve shows how much sellers of a product want to sell at each possible price, holding fixed all other factors that affect supply.” 51 The “Supply Curve,” graph as provided below, shows that “the supply curve [is generally] upward sloping: the higher the price, the more corn farmers want to sell.” 52 Producing and selling supplies the market. As before, it is important to remember that these curves assume and hold all other factors, other than price alone, constant: “[a] change in one of these other factors will cause the supply curve . . . to shift,” as in Shift of Supply Curve. 53

When we combine the supply and the demand curves, we can derive the product’s equilibrium price. The equilibrium price “is the price at which the amounts supplied and demanded are equal. Graphically, it’s the point where the supply curve and the demand curve intersect.” 54 This point is where the market clears itself, “with buyers and sellers

48. Id. at 27.
49. Id.
50. Id.
51. Id. at 29.
52. Id. at 30.
54. Id. at 32.
making all their desired purchases and sales.” In the Equilibrium Price Curve example below, the market equilibrium price is $3 and the quantity is $9. This is the price at which the market is “happy.” When the government gets involved with this basic economic process, this natural equilibrium price is thwarted, and, as a result, excess supply or demand occurs.

![Equilibrium Price Curve](image)

Its important to remember that the supply and demand curves are constantly moving and reacting to market information. For example, refer again to Bernheim & Whinston’s corn examples reproduced here. Whenever the market absorbs information, buyers and sellers, collectively called the market, make decisions based upon that information. To give a specific hypothetical, refer to Graph B (below). Consider this hypothetical regarding consumers’ use of plastic Dixie cups. If the Food and Drug Administration issued a press release outlining validated scientific research concluding that plastic Dixie cup usage is linked to a heightened cancer risk, consumers will react to this information by not purchasing plastic Dixie cups anymore, or at least not purchasing as much of them. To compensate for the decreased demand, sellers have to lower their prices to entice the consumers to purchase the cups. Notice in part (b) of the graph below that a decrease, or shift, in demand inward causes the price of the good to lower.

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55. *Id.*
56. *Id.* at 36.
Effects of Shifts in Demand or Supply on Market Equilibrium

(a) Increase in demand

(b) Decrease in demand

(c) Increase in supply

(d) Decrease in supply

Similarly, the problem with taxing a specific item is that the tax will disrupt this natural process within the market. To determine the tax’s burden, it is helpful to consult some more models. Because taxes interfere with natural market policies, there are several ways to graphically assess the effects of a tax. Demand shift method, supply shift method, and the wedging model (collectively referred to as the welfare effects of tax) all show the effects of the same tax from a different perspective, but all models come to the same conclusion: a tax on a specific good, in a competitive market, creates a deadweight loss shared by all of society.

57. Id.
The Supply Shift Method showcases the effects of a specific tax by examining the shift in supply. Remember, the shift of the supply curve has to do with anything other than the actual price of the good. In a firearm sales example, taxes, labor strikes, metal shortages, etc. would cause the supply curve to shift. Bernheim and Whinston’s Supply Shift Method (above) shows “the effects of a specific tax of $T$ per gallon of gas[oline].”59 “Without the tax, the market price would be $P_0$ and $Q_0$ gallons would be bought and sold.”60

With the vertical axis measuring the price paid by consumers, the tax causes the supply curve to shift upward by the distance $T$ at each quantity. With the tax, consumers pay $P_b$ per gallon, firms receive $P_s = P_b - T$ per gallon, and $Q_T$ gallons are bought and sold. The total tax collected is the grey-shaded area, which equals $T \times Q_T$. The tax causes the price per gallon paid by consumers to increase and the price per gallon received by firms to fall. The sum of the two changes equals $T$, the amount of the tax.61

Another way to show this is illustrated below.62 “Now, the vertical axis measures the price received by firms, so the tax shifts the demand curve downward by the distance $T$ at each quantity.”63 The outcome identified here is the same as in the above Supply Shift Method.64

58. Id. at 541.
59. Bernheim & Whinston, supra note 44, at 541.
60. Id.
61. Id. at 541.
62. Id. at 544.
63. Id.
64. Id.
When putting all these inputs together in one graph, we can begin to analyze the differences in the allocation of surpluses. Referring to the “Welfare Effects of a Specific Tax Graph,” below, the area above the original price point $P_0$, but below the demand curve, $D$, is referred to as consumer surplus. This is shown as the triangle CDE below. It is the utility and satisfaction consumers get when they buy goods at the various quantities. The area below the price $P_0$ and above the supply curve $S$ is the producer surplus. It is represented as triangle FGH, below. Notice that when the market is allowed to be at equilibrium, the intersection of supply and demand, the aggregate surplus is maximized. However, when a tax is imposed and the price rises up to $P_b$ from $P_0$, the consumer surplus shrinks to C, the producer surplus shrinks to H, the government gets D and F, and society as a whole loses E and G. The dark-shaded area below (E and G) is referred to as the deadweight loss of taxation.66. “This deadweight loss arises because the $Q_t – Q_0$ [quantity produced with the tax minus quantity produced without the tax] gallons of gas that are not being produced and consumed with the tax cost firms less to produce than consumers are willing to pay.”67

65. BERNHEIM & WHINSTON, supra note 44, at 544.
66. Id. at 547-48.
67. Id. at 548.
The major takeaway is that it is unfortunate enough, from an economic standpoint, that the government taxes items, but it is even more unfortunate when the government adds another layer of taxation. This additional layer, known as the violence tax, only serves to hurt and interfere with the natural market process. Up until this point, the examples demonstrate an interaction between consumers and manufacturers. However, the example can also refer to an interaction between consumers and gun shops within the affected jurisdictions. Even assuming consumers stay in these punitive jurisdictions, the government is carving out more and more deadweight revenue loss by imposing excise taxes, like the violence tax.

**B. Violence taxes push consumers into more business-friendly jurisdictions**

Another major effect of these local firearms and ammunitions taxes is their pushing effect. By imposing the tax, local governments are, in effect, pushing consumers to frequent and support out-of-jurisdiction stores and markets. This is especially true of Cook County, Illinois whose suburbs all border counties and jurisdictions with substantially lower taxes, such as Will County, Illinois and Lake County, Indiana, which are much more rural and firearm-friendly locales. Moreover, Indiana, as a state, generally has lower sales tax.

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68. *Id.*

69. *See generally Six Places Chicagoans Will Flee To if Property Tax Increases are Part of Chicago’s Pension Fix, ILL. POL’y* (Feb. 13, 2014), https://www.illinoispolicy.org/six-places-chicagoans-will-flee-to-if-property-tax-increases-are-part-of-chicagos-pension-fix (Although the article is about property taxes, the idea is the same: tax more and expect people to leave or change their economic habits.).
Consumer responsiveness

The central tendency of consumers responsiveness to price changes, by taking their business elsewhere or ceasing/modifying economic behavior, is measured broadly by elasticity of demand.70 “[Price] elasticity of demand [measures] the percentage change in the amount demanded divided by the percentage change in price.”71 Elasticity, in a broad sense, is best explained by how consumers respond to changes in prices. Generally, if a higher percentage change in price causes consumers to react disproportionally through a change in the quantity they demand, the product is said to be elastic. “Products tend to have more elastic demands when they have closer substitutes to which consumers can switch in response to a price increase. Demand will also be more elastic when the potential buyers of the product regard it as a discretionary (luxury) purchase, rather than as a necessity.”72 A good example of a product with an inelastic demand is tobacco – changes in the price of tobacco do not cause people to stop buying tobacco by a large margin. Hypothetically, this can be explained as follows: if a 1% increase in the price of a pack of cigarettes results in less than a 1% change in demand, the cigarettes have an inelastic demand.73 The same thing can be said for prescription drugs and gasoline which have no substitutes, while brands may have substitutes.74

Sales tax, plus a violence tax, on an item that climbs into the hundreds, or even thousands, of dollars can easily add up to an additional several hundred dollars. Because sales tax alone is something consumers seek to avoid, it only follows that consumers will also seek to avoid an arbitrary and automatic “violence tax” whenever and wherever they can. The wrinkle in this elasticity analysis is in the addition of differing jurisdictions, which is not usually included in the preliminary teaching and discussion of elasticity. Normally, an introductory elasticity analysis rests on the fact that the person affected assumedly cannot circumvent the rise in price, i.e. the person either will or will not continue to buy Good “X.” But in the firearm analysis here, even

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70. Bernheim & Whinston, supra note 44, at 46.
71. Id.
72. Id.
74. For example, coffee may be more inelastic because coffee as a commodity has no substitute; if you are a coffee drinker, and the price of coffee skyrockets, you may continue to take the plunge because there is no tenable substitute. By contrast, if the price of Folgers Coffee skyrockets, but Maxwell House stays the same, you are not going to quit or modify your coffee habit; instead, you are just going to modify what brand you buy because brands tend to be more elastic.
a consumer in the market for a good with *perfect inelasticity* can and will migrate to an area where they will not have to pay extra for an item they need. Likewise, even a good with elastic demand will cause consumers to travel across state or county lines to get what they want, provided it is a large purchase of relative importance. Thus, the issues of supply and demand and elasticity are, in a way, circular. They are even more circular when we take into account differing jurisdictions and municipalities.

Although guns are not a necessity, they are a product for which people can hardly find a perfect substitute. To those who need guns and who can buy guns legally, the imposition of another tax forces them to choose to go somewhere else to buy their weapons, instead of choosing not to purchase one. Guns purchased from other counties are regarded as substitutes of locally purchased guns. It is the same logic as the cigarettes mentioned above – consumers will just react to increased taxes by bringing their business elsewhere to avoid the tax. As Emily Zanotti writes, “Chicago residents who can buy guns legally will simply skip county—or state—lines to escape the tax, the way they do with the other things Chicago punishes you for buying, like cigarettes, gasoline, sugary snacks, bottled water, liquor, parking, food, cable television, soft drinks, hotels, car leases, cell phones, and tires.” While consumers feel the pushing effect of excises taxes, they are not the only ones.

**Producer responsiveness**

Government intervention also causes businesses to leave areas with violence taxes and move into more business-friendly locales. This is evidenced by Maryland’s pushing of Beretta U.S.A. Corp. to Tennessee, where Beretta is building a new facility to continue its operations hassle-free. Maryland’s Firearm Safety Act of 2013 is credited as the reason that Beretta started to build a new facility in Tennessee; in fact, Beretta initially planned on staying in Maryland and using the Ten-

75. In other words, even if we have a product that has a large amount of elasticity (meaning they can for sure live without it – not addictive or necessary in any way), they will still continue to seek it out if neighboring jurisdictions provide the product for a more reasonable price.

76. Gara, *supra* note 73.

77. Emily Zanotti, *Chicago’s Not-So-Brilliant Bullet Tax, Federalist* (Nov. 11, 2015), http://the federalist.com/2015/11/11/chicagos-not-so-brilliant-bullet-tax/ (This article is somewhat inaccurate about certain facts, such as the Chicago handgun ban, because, as of the time the article was written – 2015, Chicago *did not* have a ban on handguns; this was decided in the landmark Supreme Court case of *McDonald v. Chicago*, 561 U.S. 742 (2010)).

nessee plant as a place to develop new equipment and for production of new lines only. However, Beretta saw the writing on the “political” wall and decided it was best for them to move all their operations from the Accokeek, Maryland plant to Gallatin, Tennessee, taking 300 jobs with them. Like many firearms manufacturers, Beretta could not afford to stay in a state that banned some of its most popular products and soon might decide to ban the rest. Despite having to move their operations out of Maryland, the Beretta Plant was experiencing unprecedented levels of demand. Beretta, a nearly 500-year-old family-owned company, uses state-of-the-art manufacturing processes and technology. As of 2013, Beretta held the contract for the United States Army’s sidearm, so it follows that even during a slow market for firearms, Beretta is constantly producing products and, in the process, employing many workers to keep up with demand. While some gun manufacturers move because of the combination of state incentives to upgrade their facilities and politics, Beretta is simply moving because of Maryland’s politics.

Another example of governmental pushing is Strum, Ruger & Co., who purposely chose not to open its third manufacturing facility in either of the two states that currently house their plants: New Hampshire and Connecticut. Instead Strum, Ruger & Co. opted for North Carolina, a much more gun and business-friendly state. Strong demand for firearms is due to the anti-gun political environment at both national and state levels, says its CEO.

79. Id.
80. Id.
81. Id.
82. Id.
83. Id.
84. Miniter, supra note 78.
85. Remember, 2013 is when the Miniter, supra note 78, article was written. See also Beretta M9 Pistol, MILITARY.COM, http://www.military.com/equipment/m9-pistol (last visited Dec. 27, 2016) (showing that the Beretta M9 is still the current contract pistol sidearm for the United States Armed forces); but see Matthew Cox, Army Rejects M9A3 Proposal, Opt for New Pistol, MILITARY.COM (Jan. 9, 2015), http://www.military.com/daily-news/2015/01/09/army-rejects-m9a3-proposal-opt-for-new-pistol.html (stating that, as of 2015, the Army rejected the new proposal, opting for a new design).
86. Miniter, supra note 78.
89. Id.
Another example is Kahr Firearms Group, who moved its corporate headquarters from New York to Pennsylvania in response to New York’s S.A.F.E. Act, the first state law created after the Sandy Hook Massacre in Newton, Connecticut. 90 “Kahr purchased 620 acres” in Pennsylvania, where they “expect to build a new factory” and estimate the creation of 80 – 100 jobs over the coming years; in addition, Kahr is moving its corporate staff to the new facility. 91 According to Kahr’s Vice President of Sales and Marketing, “We’re looking for a more friendly environment for our business . . . [m]aybe we could have stayed here and built a plant, but the way the bill was passed left us feeling there were a lot of uncertainties going forward.” 92

Even manufacturers of firearm accessories and parts are moving their businesses in response to legislative attacks on their industry. Magpul Industries, which was formerly based in Erie, Colorado moved to Wyoming and Texas as a result of Colorado’s law banning firearm magazines that are capable of holding more than 10 rounds. 93 “The move involves about 200 jobs,” according to a Magpul spokesman. 94 To build on top of Magpul’s move, “[t]he firm’s departure could have a ripple effect on companies that supply parts and materials to Magpul.” 95 For example, Denver-based Lawrence Tool & Molding, which receives about 50 to 60 percent of its business from supplying parts to Magpul, planned on moving its operations in lockstep to wherever Magpul ends up moving to – in an attempt to continue being a supplier to the growing company. 96 Magpul ended up moving their corporate headquarters to north-central Texas while leasing a 58,000 square-foot manufacturing plant (with plans to build a permanent 100,000 square-foot facility) in Cheyenne, Wyoming. 97 Receiving states, like Wyoming are very excited to be able to host these large businesses on their soil; in fact, many of these states hope these moves will cause other manufacturers to open up shop in their

91. Id.
92. Id.
94. Id.
96. Id.
97. Moen, supra note 93.
states.\(^98\) Manufacturing plants are very significant for cities, especially smaller and more remote cities like Cheyenne.\(^99\)

These developments seem to be an over-arching theme. This can mean shifting physical locations, catering to out-of-state consumers, and even shifting business overseas to avoid regulation. There is nothing wrong with healthy amounts of regulation that keeps consumers and environments safe, equitable, and fair.\(^100\) However, governments, especially local governments, need to understand that businesses will do whatever it takes to survive. Instead of forcing local businesses into a corner with such ultimatums, governments should do a better job at encouraging business, rather than pushing it away.\(^101\) Similar to a trapped animal, businesses will do whatever it takes to stay open and continue to produce jobs, value, and enterprise. The opening of a business is a risk that one person, or a group of partners or shareholders, undertakes to make a profit. These people have put money, sweat, faith, and promise on the line in an attempt to create value and efficiency for the marketplace. Because of the effort put forth, the owners of businesses have a sink-or-swim attitude in, not only recouping the costs of their investment, but also in thriving in the marketplace by creating value. If a government proves offensive or coercive to the business model, then the company will move to a location where it will not be penalized.

Consumers have similar criteria in choosing where and with whom they do business. Concerns over the best deal, and all the personal inputs that go into a decision, are equally the same on the consumer side as they are on the business side. Thus, like businesses that move operations to avoid being penalized and abused by legislative measures, consumers will also take their business to places that do not penalize their transactions. These taxes put consumers between a rock and a hard place. On the one hand, everyone loves to support his or her local store. After all, 99.7% of U.S. employers are small businesses.\(^102\) In addition to interpersonal relationships made at these local shops, the potential for haggling and deal making is greater than

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98. Id.
99. Id.
100. For instance, financial regulation reform or regulations on food and drug manufacturing.
101. An admittedly comical example of this in the realm of shooting sports is Louisiana’s “Second Amendment Weekend” sales tax holiday. See 2015 Louisiana Second Amendment Weekend Sales Tax Holiday: September 4-6, LA. DEP’T OF REVENUE, http://www.revenue.louisiana.gov/NewsAndPublications/secondamendmentsalestaxholiday (last visited April 9, 2016).
in big box or out-of-state and county shops. On the other hand, adding $25 violence tax to an already exorbitant state and county sales tax brings the extra cost even higher; and in these hard economic times, people need to find the best deals available. Finding the best deal is the essence of a capitalist market, but these deals should be formed because other businesses are naturally failing or are unable to compete, not because their elected government officials freeze them out in an ill-fated attempt to impose its agenda on the consumer.

C. Violence taxes further encourage new ways to avoid taxation altogether

Americans do not like to pay taxes. At the forefront, taxes are a legal obligation that the citizenry have imposed upon itself for the collective good, as well as the betterment of society at large. It is one of the important things that no one enjoys doing – very much akin to children complaining about eating vegetables or doing arithmetic. However, no person has a legal obligation to incur more than his or her fair share; it follows that avoiding taxation by shaping events to reduce or eliminate tax liability is perfectly fine. Not only is it perfectly acceptable to avoid taxation within the outer parameters of the law, but also, methods for doing so are also widely publicized and disseminated. Some people will go to ridiculous lengths just to avoid paying a tax. If these new violence taxes gain traction, there will be a greater shift in shopping patterns across county and state lines – something local jurisdictions should seek to avoid as much as possible to ensure they are maximizing business environments, which, in turn, lead to the maximization of local tax revenue. This is especially imp-

103. On an average gun that costs $500.00 with a 10% sales tax, plus the $25 violence tax, to a total of cost of the gun to $575, which is almost a fifth of the purchase price of the firearm itself!
104. Internal Revenue Manual, § 9.1.3.3.2.1 (May 15, 2008) http://www.irs.gov/irm/part9/irm_09-001-003.html#d0e169 (The IRS manual is provided just to make the distinction that it’s within the realm of legality to avoid taxes, but it’s still illegal to evade them. In other words, I am trying to emphasize the fact that while humans have a legal obligation to pay their taxes, no one has the obligation to pay more than his or her fair share – here we are talking about sales tax, whereas the IRS manual is more or less referring to federal income taxation – something EVERYONE is required to pay. Sales tax, by contrast, is only incurred by those who choose to conduct the transaction and buy things.).
106. Gail Cole, Online Tax Impacts Amazon: How Far Will You Go to Avoid Tax?, ALAVARA, http://www.avalara.com/blog/2014/04/24/online-sales-tax-impacts-amazon-how-far-will-you-go-to-avoid-tax (last visited Apr. 9, 2016) (The person mentioned in the opening of this article traveled across the English Channel to France just to purchase his cigarettes duty-free; this article shows that for some people, the avoidance of taxes is a very important skill and lesson that permeates the human existence.).
important in Cook County, Illinois because even Illinois courts have rejected the argument that it is legally wrong to divert sales taxes from high tax municipalities to more reasonable, lower taxed areas.\footnote{Ameet Sachdev, \textit{Sales Tax Diversion Case Dismissed by Cook County Judge}, Chi. Trib. (Oct. 13, 2015, 5:43 PM), http://www.chicagotribune.com/business/ct-sales-tax-lawsuit-1014-biz-20151013-story.html.}

The late twentieth century saw an unprecedented growth in the emergence of the World Wide Web. The advent of the Internet brought “waves of economic and legal uncertainty, with some people likening the Internet ramifications to the extensive changes experienced during the Industrial Revolution” of the nineteenth century.\footnote{Le, \textit{supra} note 13, at 396.}

With the growth of online retail purchasing, consumers connected to the World Wide Web and states found themselves the victims of the cyberspace frontier. As millions of users signed on to do their shopping and business, states lost millions in tax revenues. For years, states have attempted to tap into the lucrative e-commerce market to no avail. Because many Internet businesses exist solely in cyberspace, incorporate in only one state, and sell their products on a nationwide, their sales transactions fall within the realm of interstate commerce.\footnote{Id.}

Christina T. Le’s example is very illustrative.\footnote{Id. at 400 (Le’s illustration is as follows: “suppose a Texas resident purchases a widget from RemoteSeller.com, an Internet-based company incorporated and headquartered in Vermont that only takes orders through its website. The widget is a good purchased outside of Texas’s taxing jurisdiction for use within the jurisdiction, so it should be subject to a use tax. However, it is unlikely that the Texas resident knows about the use tax or will voluntarily remit it to the state of Texas. The easiest way for Texas to collect the use tax is to have RemoteSeller.com collect the tax at the time of purchase, in similar fashion to sales tax collection on in-state purchases. But RemoteSeller.com has no substantial nexus or physical presence in Texas. It does not have property or agents working for it in the state. Furthermore, it delivers all customer orders via common carriers.”).}

Currently, the legal background surrounding the imposition of taxes to online retailers that lack physical presence in a state is governed by \textit{Quill Corp. v. North Dakota}.\footnote{Quill Corp. v. North Dakota, 504 U.S. 298 (1992).} In \textit{Quill Corp.}, the Supreme Court held that the lack of a physical nexus in a state is sufficient grounds to exempt a corporation from having to pay sales and use taxes to a state.\footnote{Id. at 301-02.} On its face, \textit{Quill Corp.} had to do with \textit{use} taxes, which are conceptually different than sales taxes,\footnote{It is generally accepted that \textit{Quill Corp.} applies to state sales tax as well. See Ill. Rev. Gen. Info. Ltr. ST 14-0020-GIL (Apr. 7, 2014), http://www.revenue.state.il.us/LegalInformation/LetterRulings/st/2014/ST-14-0020.pdf (The Illinois Department of Revenue has cited to \textit{Quill Corp.} in numerous letter rulings, in one of its responses, the department wrote: “The United States Supreme Court, in \textit{Quill Corp. v. North Dakota}, 112 S. Ct. 1904 (1992), set forth the}}
same: the lack of a physical presence in a state allows it to avoid that state’s taxation. It is for this reason alone that many consumers prefer to shop online. As long as the retailer’s company does not have a physical presence within the consumer’s home state, the consumer can avoid taxation on a particular good. Since *Quill Corp.*, “a growing number of states are extending sales taxes to online retailers with in-state sales affiliates.” For example, Amazon now collects sales tax in 24 states to comply with those laws.

Firearm consumers, like the myriad of other retail consumers, also have the option of purchasing firearms on the Internet. Purchasing a firearm online may initially seem complicated, but with a little bit of navigation, it is not complicated. Purchasing a firearm online is very similar to buying an item on Amazon or eBay. There are numerous online gun brokerage sites. Some business, like Armslist, GunsAmerica, and others, specialize in private sales, selling antiques, collector pieces, new and used firearms. Other websites, such as Gunbroker, are set up very similar to eBay, but focus on vendors who set a bidding scheme for new firearms and conduct an auction. On Gunbroker, prospective buyers either compete for the winning bid, or they have the option to “buy it now.” Once a buyer decides to purchase, or wins the bid, the buyer makes the arrangements for payment and then does so. This can be anything from a credit or debit card transaction, check or money order, or in any other manner the vendor specifies.

This process differs from online non-firearm retail sales in the delivery of the good purchased. Federal law prohibits the shipping of firearms to anyone other than a licensed dealer. Because of this, a firearms dealer cannot ship a purchased firearm to an ordinary layman purchaser; whether that person buys a firearm in a brick and mortar store or online, they have to work through a Federal Firearms current guidelines for determining what nexus requirements must be met before a person is properly subject to a state’s tax law. The Supreme Court has set out a two-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state.”.


115. Id.


Licensee (FFL). This means that the end buyer has to pick up their purchased firearm from a federally licensed dealer. Any legitimate brick and mortar gun store is assumedly already an FFL, so there is little complication in the transaction there: the buyer goes to the store, picks out the firearm he wants, fills out the necessary paperwork, the store runs a background check on the buyer, and depending on the state, there may or may not be a waiting period.

The complications of online firearm sales lie in the details of the purchase. If a “long gun,” defined as a shotgun under 18 U.S.C. § 921(5), or a rifle, defined under 18 U.S.C. § 921(7), is purchased, then the buyer can choose any FFL he or she wants to use. In other words, the buyer is not required by law to pick up the firearm in the state the buyer resides in. Likewise, the same is true for buying a long gun from a gun or sporting goods store – the state where the gun is picked up does not matter, as long as the conditions of both states are met. Handguns such as pistols or revolvers are a different story. When purchasing a handgun, the buyer has to pick it up from an FFL dealer in his or her state.

The basic transaction unfolds as follows: Buyer in State A wants to buy a handgun online from Vendor in State B. This specific Vendor in State B has a very attractive price, good shipping policies, and good reviews. Buyer in State A wins the auction, or outright purchases it, and sends a check to Vendor in State B. Once Vendor in State B receives the payment, he or she then ships the firearm to an FFL of Buyer’s choosing in State A. Buyer in State A has to arrange the sale with the State A FFL prior to making the purchase. Most FFLs do not mind doing this for a small fee. The FFL chosen by Buyer in State A receives the firearm in the mail from Vendor in State B. Buyer then goes to the FFL in State A, who administers the paperwork, calls in the background check, and takes care of the state-level paperwork. Then, Buyer pays the FFL for the service and goes home with the firearm.

Gun Stores are assumedly available in every state, which begs the question, why would a buyer go through the trouble and time to purchase a firearm online? Besides getting the best deal on the asking

118. Id. § 922(a)(1)(A)-(B).
120. 18 U.S.C. § 922(b)(3).
121. Id.
122. Most places charge anywhere from $20.00 - $50.00. This is personal experience I have noticed first hand.
price, one of the big reasons is the avoidance of state sales tax. If an individual wants to purchase a handgun, brick and mortar options become limited as in-state gun stores are naturally going to be subject to in-state sales tax. So if a buyer lives in a state with excessive sales tax, not to mention subject to an automatic $25.00 violence tax, like a buyer in suburban Cook County, Illinois or Seattle, Washington, he or she is out of luck. This phenomenon occurs less with long guns because purchasers can drive across state lines and, as mentioned above, purchase long guns in other states. Regardless of what type of firearm the buyer wants to purchase, he or she can get an amazing price with an out of state vendor and can strategically pick vendors that are out of state to avoid the sales tax on the firearm. Firearms are lifelong investments: assuming the owner takes care of the piece, keeps it clean and well-oiled, firearms are capable of being passed down through generations. Many are heirloom quality because they are well-built, intricate machines made of billeted steel with precision craftsmanship; they tend to be relatively expensive.\textsuperscript{123} Sales tax on an item that climbs into the hundreds, or even thousands, of dollars can easily add up to several hundred dollars of tax. Because sales tax alone is something consumers seek to avoid, it only follows that consumers will seek to avoid an arbitrary and automatic “violence tax” whenever possible.

Because of the attraction of avoiding sales tax and, an unfavorably viewed, “violence tax,” jurisdictions that apply a “violence tax” on top of the already assumed sales tax risk pushing customers of their own brick and mortar stores to out-of-county stores.

Despite American love of avoiding sales taxes when possible, a growing number of consumers, including gun consumers, actually support the taxation of online sales purchases. This is because it takes the competitive edge away from online retailers who have very little overhead, and thus can offer a lower priced product, in addition to a no-tax fee.\textsuperscript{124} Tennessee, which has no income tax, generates much of its

\textsuperscript{123} A standard entry level handgun is around 400-500 dollars, rifles are even more, standard shotguns tend to be much cheaper, in the 200-500 range, but nicer pieces with carved wood and polished blued steel can be anywhere from 800 to thousands of dollars, even hundreds of thousands. See PURDEY, http://www.purdey.com (last visited Oct. 26, 2016) (Purdey Shotguns, for example, are completely handmade, custom fitted shotguns made in the U.K. for the likes of the Royal family, and anyone else who can afford the average price tag of $100,000.00. You must go overseas and be fitted by one of their master craftsman. These guns take years at a time to build); PERAZZI, http://www.perazzi.it (last visited Oct. 26, 2016); KRIEGHOFF, https://www.krieghoff.com (last visited Oct. 26, 2016); GUERRINI USA, https://gueriniusa.com (last visited Nov. 24, 2016).

\textsuperscript{124} GunsAmerica Supports Interstate Tax Bill – 20 Points to Protect 2nd Amendment Freedom, GUNSAmerica (Apr. 23, 2013), https://www.gunsa merica.com/blog/gunsa merica-supports-
tax revenue on sales and use tax. Some local gun stores are seeing the effects of online sales tax avoidance. The central complaint of these gun-store owners is that the brick and mortar shops act as a staging area for consumers to handle, test, and decide which guns he or she wants to purchase. Once they decide which firearm they desire, they then leave the store and buy the exact same gun online from a dealer in a state that has a better price and have it shipped to his or her local gun store. “It’s kind of like helping our competitors with their business,” says Dennis Williams, owner of Guns and Leather in Nashville, Tennessee.

These local “violence taxes” imposed by places like Cook County, Illinois only serve to heighten this phenomenon of pushing gun consumers to purchase from firearm dealers in other states. This incentivizes the travel of a high margin industry into friendlier states, while simultaneously passing on the opportunity cost of what could be reasonable tax revenue.

V. Conclusion

Local governments need to focus on fostering business for the benefit of its citizens. We, as a society, want to encourage entrepreneurs to take calculated business risks and dream big. These efforts are thwarted when unneeded taxes, like “violence taxes,” penalize local businesses and their consumers. Overall, state and local governments should keep taxing structures competitive, as compared to surrounding areas, to ensure that the local area receives the maximum amount of revenue they can. “Violence taxes” in Cook County, Illinois, Seattle, Washington, and, now, Los Angeles, California erode the competitive pricing structures that are essential for a healthy marketplace; they also push local consumers and businesses into more permissive jurisdictions. Finally, “violence taxes” encourage new and thrifty

interstate-tax-bill-20-points-to-protect-2nd-amendment-freedom; see also Jacob Goldstein, Why Amazon Supports an Online Sales-Tax Bill, NPR (Apr. 22, 2013, 12:57 PM), http://www.npr.org/sections/money/2013/04/22/178407898/why-amazon-supports-an-online-sales-tax-bill (Amazon supports the taxation because it makes it harder for its competitors to do the same – in other words they are using it to their business advantage.).

125. Dennis Ferrier, More Gun Stores Doing Background Checks or Online Sales, WSMV (Jan. 15, 2016, 5:04 PM), http://www.wsmv.com/story/30979552/more-gun-stores-doing-background-checks-for-online-sales.

126. Id.

127. Id.

128. Id.
ways of avoiding, minimizing, and otherwise disregarding taxes that seek to punish consumers for their hobbies, the basis of which ignited this country to liberate itself from foreign oppression and tyranny.