

Veiled Taxes and Their Outcomes: The Case of the Brady Handgun Violence Prevention Act of 1993

Chip E. Miller, chip.miller@drake.edu*
J. Royce Fichtner, royce.fichtner@drake.edu
Andrew Norman, andrew.norman@drake.edu

Introduction

There are times when the government takes a position that affects the marketing of a company's, or even an industry's, products. Many of us are familiar with the sin taxes that are applied to cigarettes and alcohol, and the fact that as prices are raised, demand for the products declines (Sadowsky, 2010). Similar results occurred when the government determined that pleasure craft such as yachts could stand to be taxed at a higher rate (New York Times, 1991). This research will focus on a veiled tax that sought to both reduce the number of federally licensed firearms dealers and increase the tax revenue generated from the licensing of those remaining dealers (Maddox). Specifically, it will investigate a little known portion of the Brady Handgun Violence Prevention Act of 1993 that dramatically increased the license fees for anyone engaged in the business of selling firearms and how that change affected the distribution of firearms in the U.S.

The Federal Firearms Act of 1938 imposed the first federal licensing requirement on manufacturers, dealers, and importers of firearms. The fee for such a license was \$1 per year, payable to the Internal Revenue Service (Carter, 2006, p.157). In 1968, the Gun Control Act heightened the importance of the federal firearms license (FFL). The Gun Control Act prohibited the direct mail order of most types of firearms by consumers and restricted interstate firearm transactions to purchases facilitated through an FFL holder.¹ The Gun Control Act raised the annual licensing fee, but kept it to the minimal sum of \$10. Due in part to the tighter mail-order restrictions, the number of FFLs rose steadily over the next twenty-five years, peaking at almost 245,000 in 1993 (BATF 2013). Many of these FFLs were not engaged in the traditional business of selling firearms but were instead so-called “kitchen-table” dealers—individuals who did not operate a conventional gun or sporting goods store, but instead conduct business out of their homes and offices to enjoy lower, wholesale prices and evade some of the red tape associated with the laws of buying and selling firearms for themselves or their friends.

In 1993, President Clinton took office with an active agenda to tighten controls on the sale and distribution of firearms. Prompted in part by the gun control advocacy group known as the Violence Policy Center and its 1992 “More Gun Dealers than Gas Stations” study that labeled the “bloated, unmanageable universe of illegitimate FFL holders” as a “public safety scandal,” the administration turned its sights on actively limiting the number of FFL dealers. President Clinton ordered a review of firearm licensing in the summer of 1993 and, as part of this review, the federal Bureau of Alcohol, Tobacco, and Firearms estimated that 46 percent of FFLs conducted no business at all, instead merely using their licenses to buy and sell firearms at wholesale prices across state lines. The Brady Handgun Violence Prevention Act of 1993 was President Clinton's first major accomplishment in the area of gun control. As noted in the final version of the Act, the purpose of the law was “To provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers before the transfer of any firearm.” A less publicized, last minute, addition to the Act was an indirect attempt to limit the number of FFL holders by dramatically increasing the cost of obtaining and holding a FFL. Instead of a \$10 annual fee, FFL holders now had to pay \$200 to obtain the license for three years and pay an additional \$90 for each 3 year renewal. In addition to the sizeable increase in license fees, there was a similar increase in paperwork and red tape necessary to be approved for the license. Applicants were now required to certify that they had informed the Chief Law Enforcement Officer of the locality in which their firearms business would be located of their intent to apply for a result. The application burden was heightened again one year later with the Violent Crime Control and Law Enforcement Act of 1994. This act required the applicant to include identification photographs and fingerprints as well as to certify that their firearms business complied with state laws, zoning laws and zoning regulations.

¹ 18 USC 923(a).

The predicted result was that FFLs fell drastically to just over 102,000 in March, 2000.

Questions arise as to the effects that this change had on the firearms industry. Did the increase in fees result in more revenue for the federal government, as would be the usual desired outcome for a tax increase? Were fewer firearms sold in the U.S. as a result of the decline in dealers? Did gun purchasers in some states suffer more than in others because of a decline in FFL holders in their home state?

We offer the following hypotheses.

H1: The increase in fees for the FFL will result in an increase in revenue for the federal government.

Normally, government increases fees or raises taxes with a goal of increasing revenue for itself. Assuming that was the case here, it would be predicted that government income would be greater after the fee increase than before, even if FFL numbers declined (Sadowsky, 2010). While the number of FFLs issued is expected to decline, the larger retailers who sell firearms—Cabela's, WalMart, BassPro and specialty firearms retailers—as well as manufacturers of firearms and ammunition are expected to be sufficiently numerous that the loss of “hobbyist” FFL holders will not offset the increased revenue from increasing fees nearly sevenfold.

H2: The increase in fees would result in fewer FFL holders.

Basic economic theory suggests that as the cost of acquiring a good increases, demand will decline. Therefore we predict that an increase in fees from \$10 per year to \$200 for three years would result in a significant decrease in demand.

H3: A decline in dealer numbers will result in an increase in sales volume for remaining dealers and a reduction in consumer choice.

Because firearms can generally be purchased only within one's home state, a decrease in the number of available purchase outlets—assuming no change in demand for goods sold—will inhibit the choice options of buyers. Those purchasers in isolated areas far from dealers cannot use mail order to purchase firearms, and so may forego the purchase or will be forced to travel greater distances to acquire their purchase. The remaining dealers have the opportunity to expand their inventory as their smaller competitors disappear.

H4: A decline in dealers is positively correlated with a decline in overall production and sale of new firearms.

When there are fewer dealers from whom to buy firearms, purchasers will seek other means of acquiring their goods (Sirico, 2001). In the case of firearms, they may still buy from unlicensed individuals in private transactions. This would result in fewer new firearms being sold, thereby decreasing demand and output from manufacturers. A similar result occurred when a luxury tax was placed on yachts, causing a decline in new yacht sales (New York Times, 1991).

Data Analysis

Data on the number of FFLs issued, firearms sold and fees charged were obtained from the Bureau of Alcohol, Tobacco, Firearms and Explosives reports from 2001 and 2014. These data were analyzed with regard to the hypotheses stated above.

Hypothesis 1 predicted that revenue for the federal government would increase, even though the number of FFL holders declined. Although not precise because of overlaps in the new 3 year license fees, the revenue generated from FFLs was calculated as the number of FFL holders multiplied by the fee structure in place during that year. Because FFL fees for 1994 were for a 3 year rather than a single year license, the annual fee was rounded to \$66.67 (i.e. \$200 divided by 3, with errors or rounding). Fees paid per FFL in 1993 were \$10 per license.

It is readily apparent from Table 1 that in the first year when the new fee structure was implemented, revenues went up dramatically—this is not surprising, as the fees increased twentyfold and the three year fee was paid at once. However, that income stream steadily declined as FFL numbers diminished, with a large drop-off of nearly 89,000 (36%) FFLs between 1993 and 1995. By 2007, income from FFLs stabilizes at the low \$3 million per year range and FFLs stabilize between 47,000 and 52,000. Hence H1 is supported. Actual total revenue from 1993 to 2012 was \$96.2 million. Revenue if FFL numbers had remained constant and no fee increase was instituted would have been \$49.4 million. Thus, government action from the standpoint of merely increasing revenue was sound.

Table 1
Estimated FFL Fee Revenue from 1993 to 2012

1	2	3	4	5
Year	Average fee per year for FFL	FFLs outstanding	Revenue (\$)	Revenue (\$) from FFLs assuming no change from 1993
1993	10	246,984	2,469,840	2,469,840
1994	66.67	213,734	14,249,646	2,469,840
1995	66.67	158,240	10,549,861	2,469,840
1996	66.67	105,398	7,026,885	2,469,840
1997	66.67	79,285	5,285,931	2,469,840
1998	66.67	75,619	5,041,519	2,469,840
1999	66.67	71,290	4,752,904	2,469,840
2000	66.67	67,476	4,498,625	2,469,840
2001	66.67	63,845	4,256,546	2,469,840
2002	66.67	59,829	3,988,799	2,469,840
2003	66.67	57,492	3,832,992	2,469,840
2004	66.67	56,103	3,740,387	2,469,840
2005	66.67	53,833	3,589,046	2,469,840
2006	66.67	51,462	3,430,972	2,469,840
2007	66.67	49,221	3,281,564	2,469,840
2008	66.67	48,261	3,217,561	2,469,840
2009	66.67	47,509	3,167,425	2,469,840
2010	66.67	47,664	3,177,759	2,469,840
2011	66.67	48,676	3,245,229	2,469,840
2012	66.67	50,848	3,390,036	2,469,840

Sources: “Firearms Commerce in the United States: Annual Statistical Update 2014”, and “Firearms Commerce in the United States: Annual Statistical Update 2011.”

Column 2: FFL fees of \$200 from 1994 onward are spread over 3 years, so revenue per year for outstanding FFLs is averaged at \$66.67 per year per FFL.

Hypothesis 2 is also supported. It predicted that increasing fees would result in fewer FFL dealers. Table 2 shows the decline was slight for 1994, as licenses are issued on a 12 month basis, not annually beginning on January 1. However, in 1995, the rout began and FFL numbers declined. From a peak of nearly 247,000 in 1993, license holders reached a nadir of 47,500 in 2009 and rebounded to 51,000 in 2012.

Firearms are an unusual consumer purchase as there are significant restrictions that inhibit a person’s ability to purchase firearms from a source outside of that person’s home state. Rules vary based upon the type of firearm. In general handgun purchases face tighter restrictions than long gun purchases. For example, handgun purchases across state lines must be done through a federal firearms license holder, which necessarily involves extra fees paid to the FFL dealer who receives the firearm and to the receiving agent. Long gun sales are not subject to the same federal restriction, but varying state regulations complicate most transactions.

Data regarding Hypothesis 3 can be found in Tables 2 and 3. H3 suggests that consumer choice will be inhibited as the number of dealers declines and that sales per dealer will increase.

Table 2 shows the number of FFLs issued to dealers in the U.S. from 1993 (the last year of inexpensive licenses) to 2012 compared to the number of firearms manufactured in those years.

Table 2
Firearms Production and FFLs

Year	FFLs to Dealers	Total Arms Manufactured in U.S.	Arms per Dealer
1993	246,984	5,055,637	20
1994	213,734	5,173,217	24
1995	158,240	4,316,342	27
1996	105,398	3,854,439	37
1997	79,285	3,593,504	45
1998	75,619	3,713,590	49
1999	71,290	4,047,747	57
2000	67,476	3,793,541	56
2001	63,845	2,932,655	46
2002	59,829	3,366,895	56
2003	57,492	3,308,404	58
2004	56,103	3,099,025	55
2005	53,833	3,241,494	60
2006	51,462	3,653,324	71
2007	49,221	3,922,613	80
2008	48,261	4,498,944	93
2009	47,509	5,555,818	117
2010	47,664	5,459,240	115
2011	48,676	6,541,886	134
2012	50,848	8,578,610	169

Source: “Firearms Commerce in the United States: Annual Statistical Update 2014.

As seen in Table 2, the number of arms produced increased over 75% during the period shown, while dealer numbers dropped nearly 80%. The concentration of power and merchandise among the remaining FFL holders is readily apparent. In the aggregate, consumer choice of from whom they purchase firearms is demonstrably reduced.

A further question involved how the reduction in dealers affected consumer choice in individual states. Data for

the number of FFLs per state were more difficult to locate, but information is found in Table 3 for comparison years of 2001 and 2013. In 2001, the overall number of FFLs issued to dealers dropped below 64,000, a precipitous decline from almost 247,000 in 1993. Interestingly, the number of dealers per 1000 population rose from 2001 to 2013 in 40 states. The average increase per state in the number of FFL dealers over the period was 38%. Some states saw dramatic decreases in gun dealers, presumably reducing consumer choice. Alaska, Massachusetts, Montana and New Jersey all saw significant decreases. In the case of New Jersey and Massachusetts, these declines are more likely the result of onerous state laws restricting firearms ownership in general. Inexplicably, states such as Maine, Maryland and Rhode Island saw over 100% increases in the number of FFL holders in the state. When considering the percent change of FFLs per 1000 population in each state, 28 states showed less than 10% change, either positive or negative. Montana lost almost half of its FFLs and Alaska experienced a significant decline, but both states had relatively low populations. Hence, Table 2 demonstrates that dealer sales volumes increased, showing partial support for H3. However, there is inconclusive evidence from individual states indicating that consumer choice was constrained. Overall, Hypothesis 3 is not supported.

The final hypothesis, that a decline in dealers would be positively correlated with a reduction in firearms sales, was partially supported. Table 4 shows the guns sold per year and the corresponding U.S. population. Dealer numbers dropped precipitously from 1994 to 1996 and then were halved again between 1996 and 2003. Gun sales per million population fell by almost 50% during the same time period, as predicted. Firearms sales spiked in years when restrictive legislation was considered—1993-94 during the Clinton administration (1993-2000) and especially during the Obama administration (2009 and 2012), contrary to the prediction of reduced sales with fewer dealers. The buying public likely anticipated more draconian ownership restrictions and sought to acquire firearms in advance of a predicted ban. Reports from firearms organizations indicate that Presidents Clinton and Obama were very good for business, as firearms sales peaked soon after the elections of each of these men (Beckett 2016; Devaney 2015; Gregory 2009).

Table 3
FFL holders by state

State	2001 FFLs (dealers per 1000 pop.)	2013 FFLs (dealers per 1000 pop.)	% change in dealers per 1000 pop.
Alabama	1911 (0.428)	2404 (0.498)	7.0
Alaska	1237 (1.952)	1011 (1.371)	-58.1
Arizona	1900 (0.360)	3062 (0.462)	10.1
Arkansas	1504 (0.559)	2009 (0.679)	12.0
California	6093 (0.177)	8465 (.220)	4.4
Colorado	1879 (.425)	2829 (.537)	11.2
Connecticut	1222 (.356)	1808 (.503)	14.7
Delaware	197 (.248)	345 (.373)	12.5
Florida	4438 (.271)	7494 (.383)	11.1
Georgia	2962 (.354)	3807 (.381)	2.7
Hawaii	203 (.166)	308 (.218)	5.3
Idaho	1148 (.870)	1403 (.870)	0.0
Illinois	3547 (.284)	5077 (.394)	11.0
Indiana	2544 (.415)	2961 (.451)	3.5
Iowa	1685 (.575)	2158 (.698)	12.3
Kansas	1486 (.550)	1939 (.670)	12.0
Kentucky	1931 (.475)	2473 (.562)	8.8

Louisiana	1827 (.408)	2157 (.466)	5.8
Maine	767 (.596)	3826 (2.879)	228.2
Maryland	1482 (.276)	3175 (.535)	25.9
Massachusetts	2002 (.313)	974 (.145)	-16.8
Michigan	4323 (.433)	4366 (.441)	0.8
Minnesota	2590 (.520)	2722 (.502)	-1.8
Mississippi	1540 (.540)	1504 (.503)	-3.7
Missouri	3781 (.670)	5934 (.982)	31.2
Montana	2997 (3.304)	1524 (1.503)	-180.1
Nebraska	1020 (.593)	1138 (.609)	1.6
Nevada	847 (.404)	1361 (.488)	8.4
New Hampshire	740 (.589)	1176 (.889)	30.0
New Jersey	631 (.074)	545 (.061)	-1.3
New Mexico	983 (.537)	1150 (.551)	1.4
New York	3687 (.193)	4130 (.210)	1.7
North Carolina	2997 (.365)	4728 (.480)	11.5
North Dakota	653 (1.022)	638 (.882)	-14.0
Ohio	3987 (.350)	5014 (.433)	8.3
Oklahoma	1936 (.558)	2461 (.639)	8.0
Oregon	2232 (.644)	2608 (.664)	2.0
Pennsylvania	4867 (.396)	6227 (.487)	9.2
Rhode Island	296 (.280)	602 (.572)	29.2
South Carolina	1226 (.302)	2209 (.463)	16.2
South Dakota	647 (.854)	798 (.944)	9.0
Tennessee	2401 (.417)	3516 (.541)	12.4
Texas	7535 (.353)	10,532 (.397)	4.4
Utah	862 (.377)	1241 (.427)	5.0
Vermont	575 (.939)	558 (.890)	-4.9
Virginia	2878 (.400)	4441 (.537)	13.7
Washington	2013 (.336)	2871 (.412)	7.5
West Virginia	1379 (.766)	1469 (.784)	1.9
Wisconsin	2466 (.456)	3130 (.545)	8.9
Wyoming	774 (1.565)	871 (1.494)	-7.1

Table 4
Firearms Sales and FFLs vs. US Population

Year	US population (millions)	FFLs per million pop.	Guns sold per million population
1993	260.0	950	19,445
1994	263.1	812	19,663
1995	266.3	594	16,209
1996	269.4	391	14,307

1997	272.6	291	13,182
1998	275.8	274	13,465
1999	279.0	256	14,508
2000	282.2	239	13,443
2001	285.0	224	10,290
2002	287.6	208	11,707
2003	290.1	198	11,404
2004	292.8	192	10,584
2005	295.5	182	10,970
2006	298.4	172	12,243
2007	301.2	163	13,023
2008	304.1	159	14,794
2009	306.8	155	18,109
2010	308.1	155	17,719
2011	310.4	157	21,076
2012	312.8	163	27,425

Conclusions

The government ultimately has the authority to regulate commerce and has the right to control sale of firearms through a dealer network. The goals of the government through the fee increase were to reduce the number of FFLs issued, increase revenue from license fees and cut down on firearms sales. The first outcome of the first goal was quite successful, with FFL issuances dropping to 20% of their 1993 levels. In addition, the government was also able to increase its revenues from the sale of FFLs, with fees going from \$2.47 million in 1993 to \$3.4 million in 2012. Despite the precipitous drop in the number of licenses issued, the increase in fees was more than sufficient to offset the decline in numbers.

Firearms sales did decline from 1994 to 2005. However, sales moved up to 1994 levels in 2010 and surged in 2011-12 (see Figure 1). Were gun buyers negatively affected in terms of their ease of locating dealers? The answer to that question is still open. Fewer dealers meant that sales were concentrated in the hands of fewer sales outlets, making it more of a challenge for consumers located away from larger towns to acquire firearms. The degree to which that outcome was significant is still an open question that requires further study.

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Relevance to Marketing Educators, Researchers and Practitioners: Limiting the number of suppliers by raising the entry barrier should have an effect on consumers’ access to product. In this instance, that assumption did not hold. Also, government intervention to restrict consumer access to product is not always successful.

Author Information:

Chip Miller is a professor of marketing who has published in *Journal of Marketing*, *European Journal of Marketing*, *International Marketing Review* and other journals. His primary interests are in international marketing and consumer behavior.

Royce Fichtner is a business law professor who has published in a variety of academic journals. He is currently the associate dean at the College of Business and Public Administration at Drake University.

Andrew Norman, professor of marketing, has published in *Journal of Consumer Research*, *Journal of Retailing* and other journals. He has contributed material for numerous editions of Kotler and Armstrong’s *Principles of Marketing* and Armstrong/Kotler’s *Marketing: An Introduction*.

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