

ATF Tobacco Forfeiture Authority

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Contraband Cigarette Trafficking Act

- Contraband Cigarettes are more than 10,000 cigarettes which lack a State tax stamp in a State that requires a tax stamp. 18 USC 2341.
- Contraband Smokeless Tobacco is more than 500 units of smokeless tobacco (snuff, chewing tobacco etc.) which is not properly tax paid in the State or possessed in violation of State regulatory requirements.

Contraband Cigarette Trafficking Act

- Pursuant to 18 U.S.C. 2344 (c) ATF can seize and forfeit all contraband cigarettes and contraband smokeless tobacco.
- However, after 2006 amendments to CCTA any tobacco seized and forfeited must be either destroyed or used in CCTA undercover cases.
- Prior to these Amendments, ATF routinely auctioned seized tobacco and the proceeds were placed in DOJ asset forfeiture fund which funds law enforcement operations.

Other Tobacco forfeiture statutes

- Pursuant to Title 49 USC , ATF can seize and forfeit vehicles transporting contraband cigarettes or contraband smokeless tobacco.
- Pursuant to 18 USC 981, ATF can civilly forfeit the proceeds of CCTA cases and the proceeds of tobacco related wire fraud and money laundering cases.
- Pursuant to 18 USC 982, ATF can criminally forfeit the proceeds of CCTA, wire fraud and money laundering cases

Auctioning Tobacco

- Tobacco is a perishable commodity
- In certain instances, when ATF has seized tobacco in a civil or criminal case which may take considerable time to adjudicate, if a party makes a claim to the tobacco, rather than litigate regarding worthless spoiled tobacco, there may be an auction of the tobacco and the parties will litigate regarding this “substitute res”.
- In these instances either ATF petitions the Court for an ex parte order
- Or the parties agree to auction the tobacco and litigate regarding the proceeds.
- Some of these auctions have yielded considerable proceeds.
- Several times the proceeds have been forfeited to the US as part of plea bargains.

Auctioning Tobacco

- ATF uses a contractor to store the tobacco and to conduct the auctions.
- The contractor deducts a percentage of the auction proceeds for their fee.