

## **Illegal Tobacco Task Force**

### **Notice of Public Meeting**

**Meeting Date:** Thursday, October 13<sup>th</sup>, 2016

**Meeting Time:** 10:30 AM

**Meeting Location:** 100 Cambridge Street, 2<sup>nd</sup> floor, Room D, Boston, MA

Members will discuss proposed legislative changes to the state's laws relating to tobacco and hear a presentation from a representative from the Pennsylvania Department of Revenue regarding recent changes to tobacco tax laws in that state.

- A. Opening Remarks/Approval of Last Meeting Minutes
- B. Housekeeping Items
- C. Discussion of Proposed Legislative Changes/Amendments
- D. Working Groups
- E. Pennsylvania Dep't of Revenue Presentation
- F. Upcoming Meetings
- G. Wrap Up/Closing Comments

*Due to security at the Saltonstall Building, those interested in attending the meeting should allow for additional time to check-in.*

*If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the American with Disabilities Act, please contact DOR Human Capital Development at 617-626-2355.*

Date of Posting: October 7, 2016 @ 5:00pm

# Illegal Tobacco Task Force Minutes

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**Meeting Date:** June 29, 2016

**Meeting Time:** 10:00am

**Meeting Location:** One Ashburton Place, 12<sup>th</sup> Floor, Treasurer's Office Conference Room

**Board Members Present:** Kajal Chattopadhyay (Co-Chair), Steve Fennessy (Co-Chair), Christy Fedor, David Solet, Shawn Collins, Amber Villa (Remotely – Phone In)

**Others:** Brenda McConville, Evan Garcia, Kevin Brown, Molly Parks

## **Call to Order:**

- Meeting was called to order by Mr. Chattopadhyay at 10:06am
- Mr. Chattopadhyay revisited the Open Meeting Law with the Task Force to seek their approval to allow Task Force member Amber Villa to participate remotely.
- Mr. Solet made a motion to approve remote participation as permitted under the Open Meeting Law. The Task Force voted unanimously to approve remote participation.
- The Task Force was also asked to review the previous meeting minutes.
- Mr. Fennessy made the motion to approve the minutes. The motion was seconded by Ms. Fedor and the Task Force unanimously voted to approve the minutes.

## **Draft Report Review:**

- Collectively, the Task Force reviewed the final draft of the report to legislators.
- According to Mr. Chattopadhyay, there were minor changes (e.g., substitution of hyperlink citations) that were reflected in the final draft.
- Mr. Collins brought attention to a suggested change to a footnote. Mr. Chattopadhyay recognized the need for the change and included it in the final draft.

## **Legislative Proposal Review:**

- Mr. Chattopadhyay presented a final clean copy of the Legislative Changes document to the Task Force. He mentioned previously discovered edits were made and grammatical updates were made as well.
- The Task Force members were given a moment to scan the document to approve the changes.
- A motion to approve the Report and Legislative Proposals of the Multi-Agency Illegal Tobacco Task Force was called, followed by a roll call vote.
- Mr. Solet made the motion to approve the Legislative Proposals, followed by a YES/NO vote from the following:
  - Collins - Yes
  - Fennessy - Yes

- Fedor - Yes
  - Villa - Yes
  - Chattopadhyay - Yes
- The Legislative Proposals were approved unanimously.
- Mr. Solet also made the motion to approve the legislative Report, followed by a YES/NO vote from the following:
  - Collins – Yes
  - Fennessy – Yes
  - Fedor – Yes
  - Villa – Yes
  - Chattopadhyay – Yes
- The legislative Report was approved unanimously.

#### **Other Business:**

- Mr. Chattopadhyay shared his sentiments and gratitude towards the members of the Task Force, thanking them for their service and assistance.
- Mr. Collins agreed, noting it is not a “small feat working on legislative changes,” and calling it a monumental task.
- Mr. Chattopadhyay called for a summer break for the Task Force, stating the group will reconvene in the Fall. He also stated that the group will focus more on OTP (other tobacco products) following the summer break.
- Mr. Solet and Mr. Collins both charged Task Force leadership to continue making the case for the work that was/will be done and the need for continued funding. With pending legislative changes, a need for funding is necessary.
- The Task Force agreed to reconvene on Sept. 22, 2016, for the next meeting.
- Mr. Solet made a motion to adjourn the meeting. The motion was seconded by Mr. Fennessy and unanimously approved. Meeting was adjourned at 10:33am.

**62C, §21 – Disclosure of Tax Information**

**[XX] Paragraph 19 of section 21 of chapter 62C, as appearing in the 2014 Official Edition, is hereby amended by striking out the phrase**

**"sections 33A, 34 and 35 of chapter 64C"**

**inserting in place thereof the following phrase:**

**"sections 10, 33A, 34, 35, 37, 37A, and 38 of chapter 64C"**

**[XX] Paragraph 28 of section 21 of chapter 62C, as inserted by section 68 of chapter 46 of the acts of 2015 is hereby amended by inserting after the phrase "chapter 64C"**

**the phrase:**

**"or to task force member agency personnel described in paragraph (ii) of subsection (b) of said section 40"**

**[XX] Paragraph 28 of section 21 of chapter 62C, as inserted by section 68 of chapter 46 of the acts of 2015 is hereby further amended by inserting after the phrase "federal law enforcement"**

**the phrase:**

**"or to revenue or law enforcement officials from another state"**

So that the relevant portions of the section as amended shall read:

Section 21. (a) The disclosure by the commissioner, or by any deputy, assistant, clerk or assessor, or other employee of the commonwealth or of any city or town therein, to any person but the taxpayer or his representative, of any information contained in or set forth by any return or document filed with the commissioner, except in proceedings or other activities to determine or collect the tax or for the purpose of criminal prosecution under this chapter, chapters sixty A, sixty-two to sixty-five C, inclusive, section ten of chapter one hundred and twenty-one A and section twenty-one of chapter one hundred and thirty-eight, is prohibited.

(b) Nothing herein shall be construed to prevent

. . .

(19) the disclosure of such information as is reasonable and appropriate to the implementation and enforcement of sections 10, 33A, 34, 35, 37, 37A, and 38 of chapter 64C.

. . .

(28) the disclosure of information to members of the multi-agency illegal tobacco task force established in section 40 of chapter 64C [or to task force member agency personnel described in paragraph \(ii\) of subsection \(b\) of said section 40](#) or to federal law enforcement or to revenue or law enforcement officials from another state for the purpose of investigating or prosecuting criminal offenses relative to contraband tobacco distribution or conducting other enforcement actions relative to contraband tobacco distribution.

64C, §33 – Unstamped cigarettes or stamps; prohibition of sale, etc.; examination and replacement of unstamped or improperly stamped packages

[XX] Chapter 64C of the General Laws is hereby amended by striking out section 33, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 33. Unstamped cigarettes or stamps; prohibition of sale, etc.; examination and replacement of unstamped or improperly stamped packages

Licensees and stampers shall not sell, borrow, loan or exchange unstamped cigarettes or stamps to, from or with other such licensees or stampers unless previously authorized in writing by the commissioner, and licensees and stampers proposing to engage in such a transaction involving the sale, borrowing, loan or exchange of unstamped cigarettes shall submit a written request for the commissioner's authorization not less than thirty days before the date of the proposed transaction:

provided however that, notwithstanding the thirty-day requirement set forth above, in an emergency situation caused by the failure or malfunction of stamping equipment where that requirement would cause undue hardship, licensees and stampers may submit a written request for expedited authorization for a sale, borrowing, loan or exchange of unstamped cigarettes or stamps between stampers, and the commissioner may grant such authorization. Licensees, unless they are also appointed as stampers, shall not

accept deliveries of unstamped or improperly stamped packages of cigarettes except as previously authorized in writing by the commissioner. Every licensed retailer and licensed vending machine operator shall immediately examine all packages of cigarettes

received by them and shall immediately return to their supplier any and all packages of cigarettes that are unstamped or improperly stamped. Such supplier shall replace them with packages of cigarettes upon which stamps have been properly affixed. In addition to other remedies provided by law, the commissioner may assess a civil penalty of not more than \$5,000 for a first violation of this section or not more than \$25,000 for each subsequent violation.

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64C, §38A - Seizure, ~~and forfeiture and sale~~ of unstamped cigarettes and ~~smokeless other tobacco products on which tax has not been paid~~; warrants

[XX] Chapter 64C of the General Laws is hereby amended by striking out section 38A, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 38A. Seizure, ~~and forfeiture and sale~~ of unstamped cigarettes and ~~smokeless other tobacco products on which tax has not been paid~~; warrants

(a) Whenever the commissioner discovers:

~~(b)~~(1) any unstamped cigarettes subject to tax under this chapter which are found in the possession of any person other than a stamper, a common carrier transporting such cigarettes under a proper bill of lading or freight bill which states the quantity, source and designation or destination of such cigarettes, or other person transporting unstamped cigarettes in actual possession of the documents required by section 36, or a person authorized in writing by the commissioner to possess such unstamped cigarettes; or

~~(c)~~(2) any unstamped cigarettes or other tobacco products that are being stored or appear to be stored at a location that has not been reported by any licensee, as required by section 2, as premises at which tobacco products are currently held, placed, or stored.

~~(d)~~(3) any such unstamped cigarettes or other tobacco products that are otherwise held, purchased, possessed, imported or acquired in violation of

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paragraphs (a), (b), (c), (d), (f), or (g) of section 10 or of sections 34, 35, 37, or 37A; or

~~(e)~~(4) more than ten thousand units of other tobacco products in the possession of a licensed wholesaler or licensed cigar distributor under circumstances that provide reason to believe that such licensee possesses such other tobacco products with the intent to evade any of the excises imposed by this chapter on such other tobacco products or payment thereof; provided that such circumstances shall include but not be limited to such licensee's history in two or more recent periods of failure to file returns and pay excise relative to other tobacco products of the type such licensee is found to be in possession of or of reporting sales and paying excise on sales of other tobacco products corresponding to quantities substantially below the quantities such licensee is found to be in possession of or is known to have purchased or otherwise acquired during those periods; or

~~(f)~~(5) any falsely made, fraudulently made, forged, altered or counterfeited cigarette excise stamps and any cigarette excise stamps otherwise not prescribed or authorized by the commissioner; or

~~(g)~~(6) any un-affixed genuine cigarette excise stamps found in the possession of anyone not being a stamper or a person otherwise authorized by the commissioner to possess such stamps; or

~~(h)~~(7) any machines or devices for affixing stamps not prescribed or authorized by the commissioner;

he may seize and take possession of such unstamped cigarettes, other tobacco products, stamps, and machines or devices, together with any vending machine or other receptacle in which the unstamped cigarettes or other tobacco products are

contained, and forfeiture proceedings shall be pursued in accordance with the provisions of section 38B.

(b) If the commissioner believes that any of the items described in paragraph subject to seizure under subsection (a) above as being subject to seizure of this section are being kept, stored, sold or concealed in a store, warehouse, building, vehicle, vessel or other place anywhere in the commonwealth or territorial waters thereof, the commissioner or his authorized agent or designee may make a complaint on oath to a district court justice or superior court justice authorized to issue search warrants in criminal cases setting forth the basis for his belief and describing the place to he seeks to search and the items and property he seeks to search for and seize. The justice, if satisfied that there is probable cause for such belief, may issue a warrant describing the place to be searched, identifying the property to be searched for, and authorizing the search for and seizure of such property. In addition to authorizing the search for and seizure of the items described in paragraph (a), a warrant may authorize search for and seizure of documents, records or other items relevant to the origin of tobacco products seized or to be seized, the payment or non-payment of tax on such tobacco products, and the possession or control of the place to be searched. Search warrants issued pursuant to this section shall be issued in the manner provided in sections 2, 2A, and 2B of chapter 276, in so far as they are applicable, and return of such warrants shall be in the manner provided in section 3A of chapter 276. Nothing in this paragraph shall be construed to prevent warrantless entries and administrative inspections pursuant to sections 5 and 11, nor shall it be construed to prevent warrantless seizures of property authorized by paragraph (a) above in connection with such inspections, nor shall it be construed to prevent warrantless entries and seizures in any other situations in which a warrant is not required by the laws or constitution of the commonwealth.

64C, §38B [new section] - Forfeiture of Property

**[XX] Chapter 64C, as appearing in the 2014 Official Edition, is hereby amended by inserting after section 38A the following section:**

Section 38B. Forfeiture of Property

(a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(1) Any unstamped cigarettes subject to tax under this chapter which are found in the possession of any person other than a stamper, a common carrier transporting such unstamped cigarettes under a proper bill of lading or freight bill which states the quantity, source and designation or destination of such cigarettes or other person transporting such unstamped cigarettes in actual possession of the documents required by section 36, or a person authorized in writing by the commissioner to possess such unstamped cigarettes; any such unstamped cigarettes or other tobacco products that are being stored or appear to be stored at a location that has not been reported by any licensee, as required by section 2, as premises at which tobacco products are currently held, placed, or stored; any such unstamped cigarettes and other tobacco products which are otherwise held, purchased, possessed, imported or acquired in violation of paragraphs (a), (b), (c), (d), (f), or (g) of section 10 or of sections 34, 35, 37, or 37A; any falsely made, fraudulently made, forged, altered or counterfeited cigarette excise stamps and any cigarette excise stamps otherwise not prescribed or authorized by the commissioner; any un-affixed genuine cigarette excise stamps found in the possession of anyone not being a stamper or a person otherwise authorized by the commissioner to possess such stamps.

...

(b) Property subject to forfeiture under subparagraphs (1), (2), (4), (5), (6), and (7) of subsection (a) shall, upon motion of the attorney general or district attorney or the commissioner, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Unless the court for good cause shown orders otherwise, regardless of the final disposition of such related criminal proceeding, if any, Property property subject to forfeiture under subparagraph (1) of subsection (a) shall be turned over to the commissioner if not already in his possession and destroyed, ~~regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise~~ provided that the commissioner may authorize the use of such property for law enforcement purposes.

...

# Illegal Tobacco Task Force



# Illegal Tobacco Task Force

- (b) The task force shall:
  - (i) facilitate timely information sharing among state agencies in order to advise or refer matters of potential investigative interest;
  - (ii) dedicate not less than an aggregate of 20 personnel from member agencies to carry out enforcement and investigative strategies;
  - (iii) **identify where illegal tobacco distribution is most prevalent and target task force members' investigative and enforcement resources** against those in violation of this chapter and chapter 62C, including through the formation of joint investigative and enforcement teams;
  - (iv) **assess existing investigative and enforcement methods in the commonwealth and in other jurisdictions and develop and recommend strategies to improve those methods; and**
  - (v) solicit the cooperation and participation of other relevant enforcement agencies and establish procedures for referring cases to prosecuting authorities as appropriate.

# Report of Commission on Illegal Tobacco - 2014

- “Massachusetts will bring in an additional \$157.5 million a year and that the annual revenue loss from tax avoidance will be in the range of \$62 million to \$246 million in excise taxes and an additional \$12 and \$49 million in sales tax revenues”

# Levels of Diversions

## I-IV

- **Level I- Personal use-** Individual obtains product for personal use products from out of state or on-line. Impact on Ma- **Low**
- **Level II- Retail use-** Individual obtains product for sale at regional retail outlets. Obtains product from out of state or other country. Small group of customers. Impact on Ma- **Med**

# Levels of Diversions

## I-IV

- **Level III-Retail distribution.** Organizations have large quantities of tobacco products shipped up from southern states to warehouses. Established distribution structure set up for distribution to retail outlets in a large geographical area.
- **Type I- No tobacco licenses.** Paying no taxes.  
**Impact- High**
- **Type II- Licensed tobacco distributor-** Blends illegal product with legal product. Pays small percentage of tax on overall sales. **Impact -High**

# Levels of Diversions

## I-IV

- Level IV-Wholesale distributors. Large Licensed Distributors– Impact- Unknown

Where do we spend out time and resources ?



# Tobacco Storage Evidence vs Assets



## CHAPTER 64C CIGARETTE EXCISE

### Section 38A Seizure, forfeiture and sale of unstamped cigarettes and smokeless tobacco on which tax has not been paid

- Section 38A. Whenever the commissioner or a police officer discovers, in the possession of any person not being a stamper, licensed transportation company or one authorized by the commissioner, any cigarettes subject to tax under this chapter that do not have affixed to them the required Massachusetts stamps showing the payment of excise, or any smokeless tobacco on which tax has not been paid, he may seize and take possession of those cigarettes or smokeless tobacco, together with any vending machine or other receptacle, which shall include, without limitation, a motor vehicle, boat or airplane, in which the cigarettes or smokeless tobacco are contained or in which they are transported. **The cigarettes, smokeless tobacco, vending machine or other receptacle seized by a police officer shall be turned over to the commissioner and shall be forfeited to the commonwealth. The commissioner shall **destroy** such cigarettes and smokeless tobacco** and shall destroy or otherwise dispose of such vending machine or other receptacle. The commissioner may, within a reasonable time after the seizure, by a public notice at least 5 days before the day of sale, sell the vending machine or other receptacle at public sale

# Illegal warehouse-NH



# Illegal warehouse-Worcester



## Prosecutors seek to auction seized tobacco products from Salem, Pelham raids

- Agents seized 36 pallets of tobacco and other tobacco products from the Salem location and 12 similar pallets in Pelham. USA Wholesalers had obtained a tobacco tax license in November 2013, but had only filed one tax return during its existence, according to prosecutors.

# Cases

- Norwood warehouse- Distributed to customers from 2012-2015. IRS/JTTF case. Increased their business in 2014-2015. Investigators believe the loss to Massachusetts is between **21-30 Million** Dollars (documented).
- 3 parties pled guilty in Fed court, awaiting sentencing.
- Tobacco seized- Value between 1-3 Million dollars. Auctioned for \$297,000

# NH warehouse- FBI NH case- June 23, 2016- Unknown loss to MA



# Warehouse- Worcester Ma

- Operating as Warehouse since November 2014. 11/14-11/15 \$30,000-\$50,000 a week in sales
- 11/15-7/8/16 \$90,000 a week in sales .
- Search Warrant 7/8/16
- Loss to Ma over **4 Million**

# Task force past case

- Suspect #1/#2- S/W May 2016-Purchased 35 ½ cases of cigarettes a week. Sold them to stores from Chicopee to Boston, Providence and Hartford. Since 2012 did about 1.9 Million in retail sales. Loss to Ma about **\$800,000**
- Suspect #3 May 2016- Owner of Massachusetts convenience store. Customer of Perez. Selling cigarettes out of his store. Loss to Ma about **\$26,325**

# M.G.L 94 C

- Section 47. (a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:
- (1) All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.
- d. A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture under the provisions of subparagraphs (3), (5), and (7) of subsection (a).

# Do we really need to keep it? If so at what cost ?

Storage costs.

Physical space.

Environmental issues.

Health issues.

# Tobacco storage

- **Tobacco and Tobacco Products**

- **Revised 2008**

• <b>Storage Conditions</b>	<b>Temperature</b>		<b>Relative Humidity</b>	<b>Storage Period</b>
•	<b>°F</b>	<b>°C</b>		
• Tobacco in bales	35-40	2-4	80 - 85%	1-3 years
• Tobacco in hogsheads	50-65	10-18	50 - 65%	1-3 years
• Cigars	35-50	2-10	60 - 65%	2 months
• Cigarettes	35-46	2-8	55 - 60%	4-6 months
• Snuff	36-38	2-3	80 - 82%	3-5 months

# Storage costs

- Warehouse storage
- \$20 per pallet per 30 days + handling fee
- 10 pallets stored for 24 months = \$4,800 + \$200 handling = \$5,000

## Container storage

40 foot container \$100 a month

24 months=\$2,400

# Questions ?

- Captain Paul D'Amore
  - 508-509-5273
- Paul.D'Amore@massmail.state.ma.us



# **Pennsylvania Tobacco Taxes**

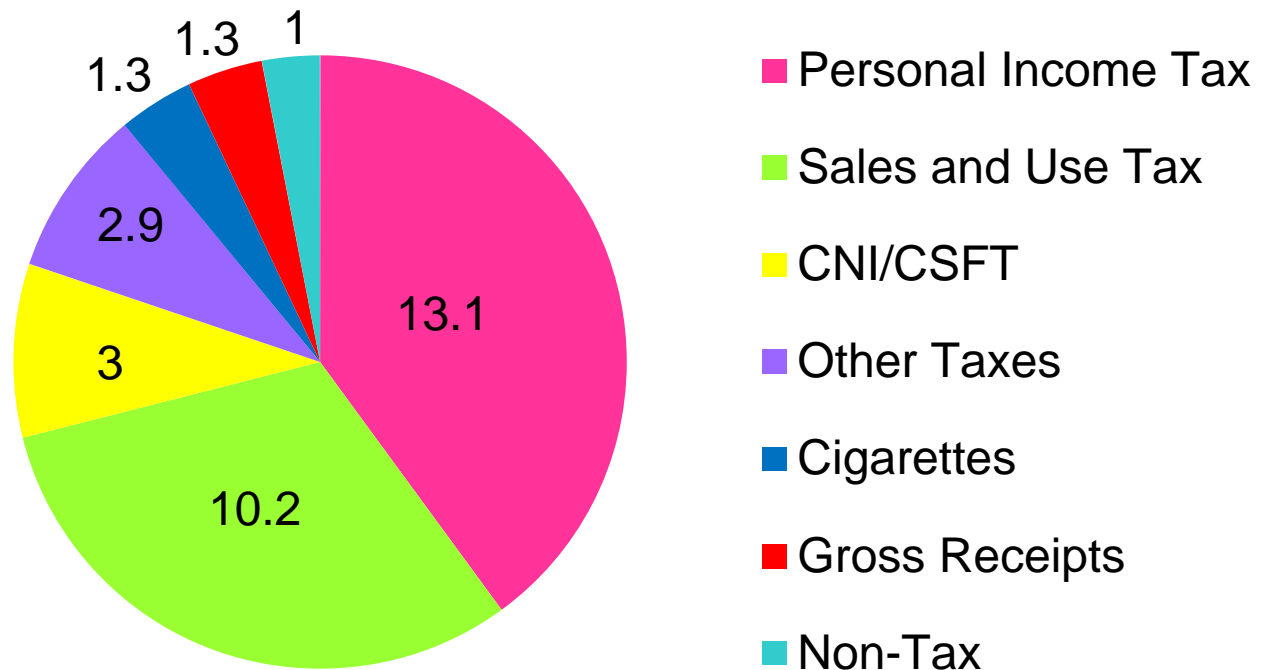
**Massachusetts Illegal Tobacco Task Force  
Boston, MA**

**October 13, 2016**



# \$31.5B Budget Passed

## 2016-2017 General Fund Revenues



Billions

## Cigarette Tax Increase

Cigarette Tax Increased \$1.00 on August 1, 2016.

This includes:

- Little cigars (4lbs/1,000 or less)
- State tax rate = \$2.60/pack
- Philadelphia tax rate now \$4.60/pack
- Floor stocks tax required
- Return and remittance due in 90 days (10/31/2016)
- Estimated revenue projected = \$430M

## 72 P.S. § 8296:Disposition of Certain Funds

**\$58M GUARENTEED** annually from the sale of cigarettes in Philadelphia.

If the sale of cigarettes does not generate \$58M, the difference will be paid from General Fund Monies.

# Tobacco Products

Effective October 1, 2016

## This includes:

- Tobacco suitable for chewing, ingesting or smoking
- Roll-Your-Own (**effective date 12/15/2016**)
- E-Cigarettes and Vape (with and without nicotine)

## Exempt:

Cigars weighing greater than 4 lbs./1000

# Tobacco Products Tax Rates

- **OTP and RYO**  
\$.55 per ounce – proportionate tax on all fractional parts of an ounce.  
1.2 oz. is minimum weight (\$.66)  
product sold in weight less than 1.2 oz. is taxed at the 1.2 oz. rate
- **E-Cigarette and Vapor**  
40% of the purchase price

# Tobacco Products Revenue

- **Retailers** required to complete floor stock tax inventories 10/1/2016\*
- Return and remittance due in 90 days (12/29/2016)
- Estimated revenue projected = \$62.7M

\* **RYO Floor Tax Inventories 12/15/2016**

# OTP Licensing Requirements

**Annual license to coincide with cigarette license schedules.**

- Manufacturers (\$1,500)
- Wholesalers (\$1,500)
- Retailers/Vending (\$25)
- Dealers (\$25)

# Imposition of Tobacco Products Tax

- Licensed Manufacturer or Wholesaler collects the tax when sold to the retailer.
- If the tax is not collected by the seller from the retailer, the retailer is responsible for filing the return and remitting the tax.
- Consumers that buy from the Internet or mail order retailers that do not collect the tax, are responsible for payment of the tax.
- Exports for sale outside of PA are exempt.

## Reporting and Remitting Tax

- Manufacturers, Wholesalers, and Retailers shall file monthly reports and remit the tax on or before the 20<sup>th</sup> day of the month following the sale.
- Information should include tobacco products brand, amount sold, tax due and tax paid. Date sold, name and license number, total weight sold. Place shipped and the name of the common carrier.

# OTP Stamping Requirement

Stamps are not required for any OTP, RYO, E-Cigarettes or Vaping Products.

# Criminal Offenses and Violations

- **Floor Tax – 100% penalty for evasion**
  - 100% penalty for evasion
  - License suspension/revocation
  - Misdemeanor, \$2,500 - \$5,000 fine, up to 30 days imprisonment
- **Sale or Possession of Untaxed OTP**
  - Summary Offense
  - \$100 - \$1,000 fine and up to 60 days imprisonment
- **Willful/Intentional Evasion**
  - Felony, \$5,000 fine, up to 5 years imprisonment

# Criminal Offenses and Violations

- **Failure to File/ Fraudulent Reports**

Misdemeanor, \$500 fine, up to 1 year imprisonment

## **Failure to permit examination or inspection**

License suspension/revocation

Misdemeanor, \$500 fine, up to 1 year imprisonment

## **Sales without a license**

Summary, \$250-\$1,000 fine, up to 30 days imprisonment

# QUESTIONS?

Anthony S. Beccone

Director

Bureau of Criminal Tax Investigations

717-783-9681

[abeccone@pa.gov](mailto:abeccone@pa.gov)