

Commonwealth of Massachusetts

Report to Legislature of Multi-Agency Illegal Tobacco Task Force

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Findings and proposals made by the Multi-Agency Illegal Tobacco Task Force to combat illegal tobacco distribution and the resulting loss of revenue to the Commonwealth of Massachusetts

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I. Task Force Creation and Legislative Background

The Multi-Agency Illegal Tobacco Task Force (Task Force) was created pursuant to section 71 of the Fiscal Year 2016 General Appropriations Act.¹ According to its enabling statute, the Task Force is co-chaired by the Colonel of the State Police and the Commissioner of Revenue or their designees and additionally consists of the Secretary of Public Safety and Security, State Treasurer, Attorney General, and Commissioner of Public Health, or their respective designees. The Task Force has been designated with the following responsibilities:

The task force shall coordinate efforts to combat contraband tobacco distribution, including efforts to foster compliance with the law and conduct targeted investigations and enforcement actions against violators....

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 [chapter 64C] 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.

For Fiscal Year 2016, the Task Force was appropriated \$1 million for purposes of setting up the Task Force, deciding on an organizational structure, and the commencement of multi-agency enforcement and investigative operations.

The Task Force is required to meet at times and places determined by the Co-Chairs as “deemed necessary to carry out its mandate” and to submit a report each year detailing its findings, activities and recommendations. Specifically, the report shall include: (i) a description of the Task Force’s efforts and activities during the year; (ii) identification of any administrative or legal barriers, including any barriers to multi-agency action or enforcement efforts; and (iii) proposed legislative or regulatory changes necessary to strengthen operations and enforcement efforts and reduce or eliminate any impediments to those efforts. The report is to be filed with the clerks of the Senate and House of Representatives, the Chairs of the Joint Committee on Revenue, the Chairs of the Senate and House Committees on Ways and Means, and the Chairs of the Joint Committee on Public Safety and Homeland Security. The Task Force is filing this Report in compliance with its initial statutory reporting obligation.²

¹ St. 2015, c. 46, § 71; M.G.L. c. 64C, § 40.

² *Id.*

II. Executive Summary

The Task Force has spent much of Fiscal Year 2016 to date addressing organizational and structural issues, with an emphasis on determining how the Task Force should be set up and what resources each of the member agencies will contribute to it. During its first few meetings, Task Force members received and reviewed background materials relating to the breadth and methods of the illegal tobacco trade in and around Massachusetts. The Task Force next focused on meeting with law enforcement officials from neighboring states to learn about their approaches to combatting the illegal tobacco trade in their respective jurisdictions. Based on discussions with the other states' representatives and internal discussions among the member agencies, the Task Force decided on an organizational structure and commenced Task Force activities.

The member agencies that comprise the Task Force understand that they must work together as a team in order to successfully accomplish the Task Force's mission. To that end, the member agencies of the Task Force have executed an Inter-Departmental Service Agreement (ISA) which outlines the duties and responsibilities of each member agency and the resources that each agency has pledged to contribute to the Task Force. Moreover, pursuant to the terms of the ISA, each member agency agrees to share information with other member agencies as necessary to carry out the mission and work of the Task Force. In addition, as discussed in greater detail below, each member agency will have access to real-time data and information relating to ongoing investigative and enforcement efforts of the Task Force.

As the Task Force has been necessarily focused on organizational and structural matters, it is only now beginning to spend the monies it was appropriated in the Fiscal Year 2016 budget. At this stage, the Task Force is prioritizing its spending on tools and equipment which will be used in connection with investigative and enforcement activities. As there are only a few short weeks remaining in this fiscal year, the Task Force does not anticipate spending all of the monies it was appropriated in Fiscal Year 2016. The Task Force anticipates an increased need for funds beginning in Fiscal Year 2017 as it increases the scale of its investigative and enforcement activities.

As a related matter, the Task Force will need a stable source of appropriations for the next few years in order to achieve its mission to confront and combat the illegal tobacco trade in Massachusetts. In light of the uncertainty of continued funding for future years, Task Force member agencies have been reluctant to hire additional personnel to work on Task Force matters without assurances that the Task Force will be funded for future years. To date, member agencies have dedicated existing personnel at their respective agencies to assist with Task Force operations instead of hiring new employees. A stable appropriation from year to year will eliminate this impediment and enable member agencies to hire personnel and allocate appropriate resources to the Task Force. At this point in time, the Task Force highlights this uncertainty regarding continued funding as a potential obstacle to its ability to fulfill its mission and to its ultimate success in combatting the illegal tobacco trade.

Finally, the Task Force has begun the process of reviewing existing statutes and regulations with respect to tobacco and tobacco enforcement. Some provisions of chapter 64C of the General Laws, the tobacco excise statute, and provisions relating to tobacco in other chapters of

the General Laws date back to 1945 and are in need of a comprehensive update. Currently, the Task Force is focusing on clarifying definitional information, updating outdated language, strengthening enforcement and penalty provisions and revising forfeiture procedures. Given the scope of this project, it will take significant time and effort to complete. The Task Force acknowledges the value of the existing tobacco tax structure and its impact on the prevention of initiation of tobacco use by first-time users and on decreasing consumption by existing tobacco users. The Task Force anticipates completing its legislative review over the next few months and including its recommendations and proposals in its next report, which is due to be filed no later than July 1, 2016.

III. Task Force Meetings and Background Information

In order to gain a deeper understanding of the nature of the illegal tobacco market in the Commonwealth and to learn about the law enforcement efforts of neighboring states, the Task Force has convened seven public meetings over the past several months. At these meetings, members received, reviewed and discussed information relating to the size and scope of the illegal tobacco market in and around Massachusetts. In addition, members met with officials from several neighboring states to discuss their illegal tobacco enforcement efforts. These meetings took place on the following dates:

December 10, 2015
January 13, 2016
February 9, 2016
March 8, 2016
April 7, 2016
May 5, 2016
May 25, 2016

Members received information from numerous experts and individuals knowledgeable in the illegal tobacco trade, including representatives from Altria Client Services, Harvard's T.H. Chan School of Public Health, Meyercord/SICPA, the Northeast Association of Wholesale Distributors, the Rhode Island Department of Revenue – Division of Taxation, the Connecticut Department of Revenue Services – Tobacco Enforcement Unit and the New York Cigarette Strike Force/New York State Criminal Investigations Division. In addition, the Task Force reviewed publicly available materials and information relating to law enforcement efforts, technologies and investigative strategies.

Pursuant to the Massachusetts Open Meeting Law, detailed minutes of each Task Force meeting were taken, including all votes, presentations and discussions, and these minutes were published for the public according to the requirements of G.L. c. 30A, §§ 18-25.

In analyzing the illegal tobacco market in Massachusetts, the Task Force relied on presentations from industry experts, studies and written materials. As members of the Task Force have diverse backgrounds and varying levels of experience with tobacco, the presentations

and reviewed materials were designed to give the Task Force strong foundational knowledge regarding the scope and methods of the illegal tobacco trade from an international, national, regional and state-level perspective.

Broadly speaking, the tobacco market consists of two major segments: cigarettes and so-called “Other Tobacco Products” (OTP), which include cigars and so-called smokeless (e.g., chewing) tobacco.³ Cigarettes are the biggest segment of the tobacco market as use and consumption of cigarettes far exceeds that of OTP.⁴ Since most jurisdictions in the United States require cigarette packs to bear a tax stamp, legal sales of cigarettes can be tracked by public health, law enforcement and other government officials. For various reasons, OTP is not required to bear tax stamps when it is sold in most jurisdictions and, as a result, sales of OTP are far more difficult to track than sales of cigarettes. As a consequence, the data regarding the cigarette market, both legal and illegal, is much more abundant and readily available than data regarding the sale of OTP.

Like most U.S. states, Massachusetts requires that cigarettes sold within its borders bear a valid state tax stamp. The presence of a Massachusetts tax stamp is proof that the appropriate tobacco excise has been collected and remitted to the Commonwealth. Currently, the Massachusetts excise on cigarettes is \$3.51 per pack, which is one of the highest in the nation.⁵ Unlike some other jurisdictions, Massachusetts does not impose any additional tobacco excises at the municipal or local levels. Massachusetts is one of a handful of states that has adopted an encrypted tax stamp system, which allows government officials to better track the sales of cigarettes and monitor compliance with the tax laws to ensure that applicable cigarette excise taxes have been paid. In addition to being tamper-resistant and more difficult to counterfeit, encrypted tax stamps contain digital information which allow state and local officials to track the flow of cigarettes through the supply chain.

The available evidence indicates that the predominant method of the illicit tobacco trade in Massachusetts is smuggling: purchasing tobacco products from lower-tax jurisdictions, transporting them to and then selling them in Massachusetts without paying the required Massachusetts tobacco excise and sales taxes. As demonstrated by the map below (Figure 1), many states in the Northeast and New England have significantly higher cigarette taxes than neighboring states to the south and west. The tax differential between a low tax state such as Virginia, where the cigarette tax is only \$0.30 per pack, and a higher tax state like

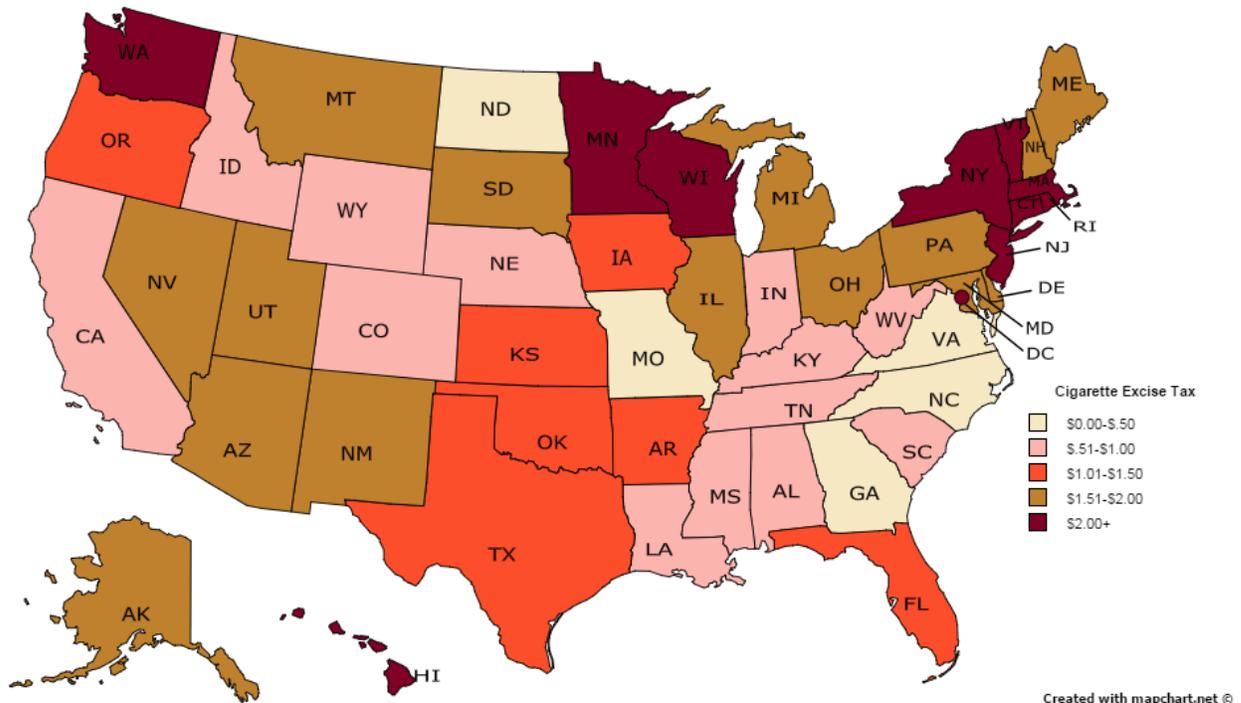
³ Electronic cigarettes (referred to as e-cigarettes) constitute another vehicle for nicotine delivery and consumption. However, e-cigarettes do not contain tobacco. While e-cigarettes are subject to Massachusetts sales tax, they are not subject to tobacco excise. Available evidence does not suggest that tax avoidance on e-cigarettes is widespread in Massachusetts. As a result, they are not discussed in any detail in this report. Should the tax treatment or regulation of e-cigarettes in Massachusetts change in the future, the Commonwealth might have to investigate the existence of an illegal market in e-cigarettes and methods to address it.

⁴ As discussed later in this report, however, the OTP market is growing steadily while cigarette sales have experienced steady and consistent declines.

⁵ In addition to the applicable tobacco excise, sales of cigarettes and OTP in Massachusetts are subject to the state sales tax of 6.25%. As of the date of this report, Massachusetts had the fourth highest state cigarette tax in the nation behind New York (\$4.35), Rhode Island (\$3.75) and Connecticut (\$3.65).

Massachusetts, where the excise is \$3.51 per pack, creates an incentive to smuggle cigarettes from one location to the other. To a much smaller extent, Massachusetts sees some tobacco products (specifically cigarettes) illegally imported from international markets.

Figure 1: State Excise Tax Rates per pack as of March 31, 2016



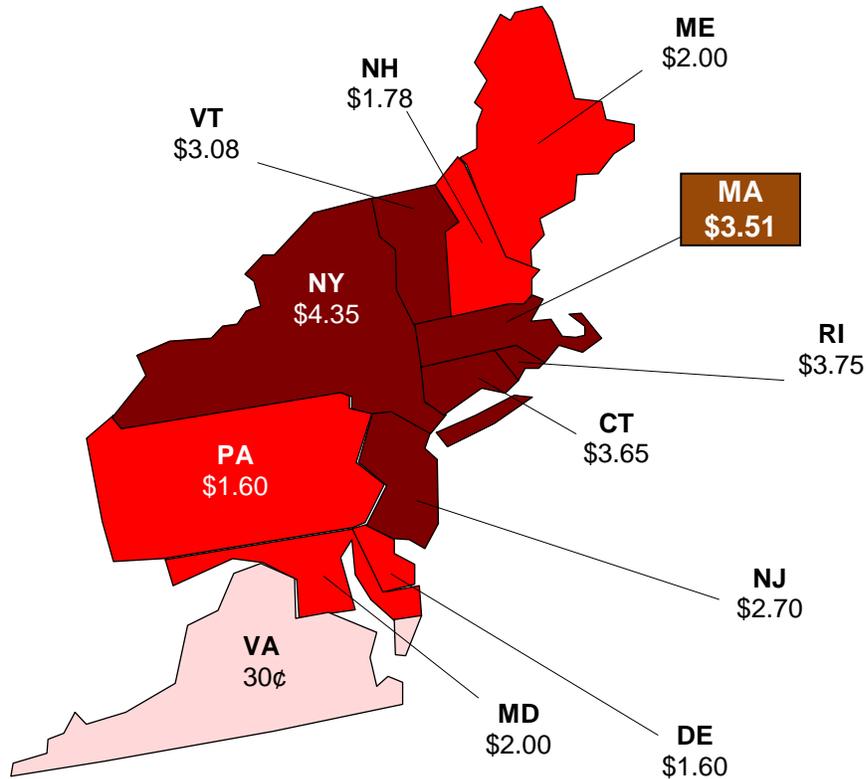
Several recent studies have indicated that approximately 11.9% - 12.7% of all cigarette packs sold in the metro Boston area failed to bear a valid Massachusetts tax stamp.⁶ Another study using different methodologies and testing techniques estimates the size of the illegal cigarette market in Massachusetts at 15.53%.⁷ The possession or distribution of any cigarettes without the

⁶ See, e.g., Altria Empty Discarded Pack Program (2012 & 2014) (finding 11.9% of discarded cigarette packs in Boston area bore out-of-state stamps in 2012, which had risen to 12.7% in 2014).

⁷ Peter Reuter and Malay Majmundar, *Understanding the U.S. Illicit Tobacco Market: Characteristics, Policy Context, and Lessons from International Experiences*, National Research Council and Institute of Medicine (National Academies Press, 2015), at p. 101 (Table 4-3) (comparing in-state cigarette consumption with tax-paid sales and estimating cigarette tax evasion in Massachusetts at 15.53% based on data from 2010-2011). Hereafter, the “Institute of Medicine Study”.

proper Massachusetts tax stamp is a criminal offense.⁸ The majority of cigarette packs sold in the Commonwealth without a valid Massachusetts tax stamp bear stamps from lower-tax states, including New Hampshire and Virginia. As the map below (Figure 2) indicates, the tax on a pack of cigarettes in New Hampshire is \$1.78 (about 50% of the tax in Massachusetts) and the tax on a pack of cigarettes in Virginia is \$0.30 (less than 10% of the tax in Massachusetts).⁹

Figure 2: Northeast Regional State Excise Tax Rates for Cigarettes as of March 31, 2016



Not only does trade in unstamped cigarettes constitute illegal activity, it also deprives the Commonwealth of a significant amount of legitimate tax revenues. In Fiscal Year 2015, the Commonwealth collected \$647.1 million in tobacco excise on sales of cigarettes and OTP combined.¹⁰ Of that total, \$617.5 million represents the total amount of tobacco excise collected on the sales of cigarettes alone. Figure 3 below shows the amount of tobacco excise taxes

⁸ See G.L. c. 64C, §§ 34, 35.

⁹ It is worth noting that New York City imposes a cigarette tax of \$1.50 per pack, in addition to New York’s state cigarette tax of \$4.35 per pack. As a result, cigarettes sold in New York City are subject to the highest tax rates in the region.

¹⁰ This figure excludes sales tax collected on sales of tobacco products, which the Department of Revenue does not track separately.

collected by the Commonwealth over the past several fiscal years.¹¹ Based on the Fiscal Year 2015 tobacco excise collections figures, even a 1% loss due to cigarettes smuggled from out-of-state would result in more than \$6 million in revenue loss for the state. As a result, it is clear that cigarette smuggling costs the Commonwealth millions of dollars in lost revenue year over year.¹²

Figure 3: MA Tobacco Excise Collections On Cigarettes and OTP

Collections by Type (in Millions of Dollars)	FY13	FY14	FY15
Cigarette	532.5	628.9	617.5
All Other Tobacco Products (OTP)	25.8	31.1	29.6
Total	558.3	660.0	647.1

While cigarettes comprise a large majority of the overall tobacco market nationally and in Massachusetts, OTP has been gaining market share in recent years. In fact, as cigarette consumption has dropped due to lifestyle changes and increased awareness of deleterious health effects, the OTP market has seen steady, consistent growth. According to the Tobacco Manufacturers’ Association, OTP represented about 8% of the national tobacco market (by revenue) in 2010 and, by 2014, that figure had increased to 17%, more than doubling in a period of four years.¹³

As indicated earlier, OTP includes tobacco products such as cigars, pipe tobacco, and smokeless tobacco (chewing tobacco or snuff). These products are sold in countless types of packaging ranging from pouches and bags for loose tobacco to the familiar tins (sometimes referred to as “hockey pucks”) for smokeless (chewing) tobacco. The lack of standardization in packaging makes applying tax stamps to these products extremely labor-intensive and, therefore, difficult. As a result, few jurisdictions currently affix tax stamps to OTP.¹⁴ Due to the lack of tax stamps, meaningful oversight of the flow of OTP through the supply chain is challenging for public health, law enforcement and other government officials.¹⁵ As a result, OTP smuggling has grown in scope and prominence in recent years. At the federal level, there have been a number of high-profile investigations, arrests and prosecutions of individuals involved in smuggling OTP. Both state and federal officials are increasingly focusing their investigative and

¹¹ The Massachusetts tobacco excise rates on cigarettes and OTP rose substantially effective July 31, 2013. The total amounts collected for Fiscal Year (FY) 2014 (which began on July 1, 2013) and FY15 reflect the increases in the tobacco excise rates.

¹² In fact, the Institute of Medicine Study estimates the loss of revenue in Massachusetts from illegal cigarette sales at just less than \$103 million. *See* Institute of Medicine Study at p. 101 (Table 4-2).

¹³ SICPA Presentation to the Task Force (Mar. 8, 2016).

¹⁴ The only jurisdictions that require tax stamps for sales of OTP, particularly smokeless tobacco, are counties and local taxing jurisdictions in the southeastern United States. Those localities apply tax stamps to OTP by hand. The Task Force is not aware of any state in the nation that requires state tax stamps for sales of OTP.

¹⁵ For example, officials conducting routine compliance inspections at a retail site are unable to verify that the appropriate tax has been paid on OTP. While a retailer might present an invoice from a licensed wholesaler detailing the taxes paid on some quantity of OTP, there is no way to ensure that the invoice is for the specific products currently at the retailer’s premises as opposed to identical product acquired on which taxes have not been paid.

enforcement activities to address OTP smuggling.

Although it is not stamped in this state, OTP is subject to a Massachusetts tobacco excise. In Massachusetts, the excise for smokeless tobacco products is assessed at a rate of 210% of wholesale cost while cigars and smoking tobacco are assessed at a rate of 40% of wholesale cost.¹⁶ Like cigarettes, OTP is taxed at widely varying rates, depending on the taxing jurisdiction in which it is sold. However, unlike cigarettes, the basis of assessment of taxes for OTP differs by taxing jurisdiction. For example, while Massachusetts assesses tax on OTP as a percentage of its wholesale price (a so-called *ad valorem* tax), several other neighboring jurisdictions base their tax assessments on smokeless tobacco on the weight of the product while applying an *ad valorem* tax or per unit tax on cigars. Figure 4 below lists the OTP tax rates for several neighboring states. Notably, Pennsylvania does not impose *any* state tax on the sale of OTP.

Figure 4: OTP Excise Tax Rates

State	Rate & Basis	Large Cigar Rate
Connecticut	\$1.00/oz	50%*
Maine	\$2.02/oz	20%
Massachusetts	210%	40%
New Hampshire	65%	65%
New Jersey	\$0.75/oz	30%
New York	\$2.00/oz	75%
Pennsylvania	\$0	0%
Rhode Island	\$1.00/oz	80%*
Vermont	\$2.57/oz	92%

-- Data as of March 31, 2016

-- Federal excise tax rate is \$0.09438 per ounce. All *ad valorem* states base the tax on the manufacturer's (wholesale) price.

-- Effective 7/1/10, Philadelphia increased its MST tax rate from 0% to \$0.36/oz. and large cigar rate from 0% to \$0.036/unit

-- In Vermont, cigars with a wholesale price greater than \$2.17/unit are taxed at a flat rate of \$2.00 per cigar and cigars with a wholesale price greater than \$10.00/unit are taxed at a flat rate of \$4.00 per cigar.

* Cigar tax cap of \$0.50/unit in Rhode Island and Connecticut.

¹⁶ G.L. c. 64C, §§ 6, 7A(a), 7B(b), 7C(a).

Since Pennsylvania does not tax OTP at the state level, Pennsylvania has become the source of a large amount of OTP smuggled to other neighboring states, including Massachusetts.¹⁷ As with cigarettes, smugglers travel to lower or no-tax jurisdictions, purchase OTP in bulk and transport it to other jurisdictions for sale without payment of the required tobacco excise in the destination state. Due to its close proximity to Pennsylvania, Massachusetts has experienced a significant amount of OTP smuggling which has, predictably, resulted in a sizable loss of revenue from the sale of OTP.

While the national OTP market has grown significantly over the past few years, smokeless tobacco use in Massachusetts has declined slightly during that time. According to data from the Centers for Disease Control and Prevention, the rate of smokeless tobacco use among adults in Massachusetts was 1.7% in 2011, 1.3% in 2012 and 1.5% in 2013.¹⁸ Preliminary data for 2014 shows almost no change for 2014 from 2013 levels. However, the most recent tobacco excise collections figures for OTP in Massachusetts are not consistent with the smokeless usage data. In fact, data from the most recent fiscal years shows a year over year decline in tobacco excise collections for OTP from Fiscal Year 2014 to Fiscal Year 2015.¹⁹ As Figure 5 below indicates, the total tobacco excise collections for OTP decreased from \$31.1 million in FY14 to \$29.6 million in FY15. During this period, collections from cigars and smoking tobacco remained the same at \$14.1 million for each year. Notably, however, the excise collected on smokeless (chewing) tobacco declined from slightly over \$17 million to \$15.5 million during that period, representing a nearly 10% drop in collections during a period when smokeless tobacco use remained stable.²⁰

Figure 5: MA Tobacco OTP Excise Collections Broken Down By Category

Collections by Type (in Millions of Dollars)	FY13	FY14	FY15
Cigar & Smoking Tobacco	13.4	14.1	14.1
Smokeless Tobacco Products	11.4	17.0	15.5
Total	24.8	31.1	29.6

¹⁷ See, e.g., <https://www.justice.gov/usao-ma/pr/tobacco-distributors-plead-guilty-multi-million-dollar-tax-evasion-scheme> (May 24, 2016) (accessed on May 25, 2016) (three individuals plead guilty in connection with their roles in smuggling untaxed OTP from Pennsylvania into Massachusetts and distributing it without payment of Massachusetts tobacco excise).

¹⁸ Centers for Disease Control and Prevention, *Smokeless Tobacco Use in the United States (2015)* available at: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/smokeless/use_us/; Centers for Disease Control and Prevention, *State-Specific Prevalence of Current Cigarette Smoking and Smokeless Tobacco Use Among Adults Aged ≥18 Years — United States, 2011–2013* (May 22, 2015) available at: http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6419a6.htm?s_cid=mm6419a6_e

¹⁹ As indicated previously, the tobacco excise rates on cigarettes and OTP increased dramatically effective July 31, 2013. These increases account for the increases in collections from FY13 to subsequent years.

²⁰ Smokeless tobacco usage data is reported for each calendar year and excise collections are reported by each fiscal year. Based on assumption of 1.5% adult smokeless tobacco usage rate for FY14 and FY15.

There is limited available data relating to the size and scope of the illegal OTP market in Massachusetts. According to data derived from U.S. Census and other widely available national sources, one group has estimated the range of revenue loss from the sale of smokeless tobacco (excluding cigars and smoking tobacco) smuggled into Massachusetts from other jurisdictions from \$27.2 million - \$63.44 million per year.²¹ The Task Force notes that this estimate suggests revenue loss of approximately 200 - 400% per year from illegal sales of smokeless tobacco products in the Commonwealth. While the Task Force recognizes the sizable revenue loss from illegal sales of smokeless tobacco products, it also understands the need for further data gathering and analysis to allow for additional estimates of likely revenue loss.

Based on all the information presented and reviewed by the Task Force, it is clear that cigarette and OTP smuggling is a significant problem in the Commonwealth, resulting in the loss of millions of dollars of tobacco tax revenues. As a result, the Task Force believes that a comprehensive strategy to address both forms of smuggling is required. Up to this point, however, the focus of efforts has been on addressing illegal cigarette sales. Clearly, a broader approach which includes OTP must be considered and pursued. Over the course of the next few months, the Task Force will be looking at ways to implement a strategy to address illegal sales of both cigarettes and OTP.

IV. Responses From Neighboring States

In addition to reviewing available data to gain a broader understanding of the illegal tobacco market in and around Massachusetts, the Task Force has engaged with neighboring states to discuss and learn from their responses to the illegal tobacco trade. The Task Force understands that a regional, multi-state approach is the most effective method to confront illegal trade in cigarettes and OTP.

Recognizing the significant loss of tobacco tax revenues from the illegal market, a number of neighboring states have significantly increased their efforts in enforcing their tobacco laws. Each of these states has dedicated additional resources to investigating and prosecuting tobacco violations, both civil and criminal. Over the course of the past several months, the Task Force has invited representatives from Connecticut, Rhode Island and New York to discuss their law enforcement efforts relating to illegal tobacco. As part of their presentations, the officials shared suggestions for best practices as well as thoughts on challenges and pitfalls to avoid.

In January, 2014, New York Governor Andrew Cuomo established the New York Cigarette Strike Force (Strike Force) in an effort to address a serious tobacco tax evasion problem in that state.²² The Strike Force has three regional offices spread geographically to cover each corner of the state. Each regional office is comprised of supervisors, investigators (who are sworn law

²¹ SICPA Presentation to the Task Force (Mar. 8, 2016). Based on FY14 Massachusetts collections data.

²² See Institute of Medicine Study at pp. 102-103 (Table 4-3) (estimating cigarette tax evasion in New York at 44.97% based on data from 2010-2011).

enforcement officers) and auditors who all work on investigations as part of a team. The Strike Force has partnered with 12 federal and local law enforcement agencies to assist with their investigations. Within a short period of time, the Strike Force has participated in numerous successful investigations involving illegal cigarettes and OTP, which has resulted in the seizure of millions of dollars' worth of illegal tobacco products and cash.

Meanwhile, around the same time, the Connecticut state Legislature allocated \$13 million to create a new unit dedicated exclusively to tobacco investigations and enforcement within the state's Department of Revenue Services (DRS). Using those funds, the DRS hired a Supervisor who was tasked with building the tobacco unit. The Supervisor proceeded to put together a team of investigative agents (who are sworn law enforcement officers) and tax examiners to work collaboratively and to begin tobacco tax evasion investigations. Within a short period of time, the team had put together a number of successful investigations, seizing large quantities of contraband tobacco products and cash.

Similarly, beginning in 2013, Rhode Island made substantial investments in combatting the loss of tax revenues from sales of illegal tobacco products imported from other jurisdictions. Late that year, the Rhode Island Department of Revenue (RI DOR) hired a Chief to lead its newly created Special Investigations Unit (SIU). In 2014, the SIU hired four new Tax Investigators, all of whom were retired law enforcement officers with at least five years of investigatory experience. These civilian Tax Investigators work together with trained RI DOR auditors to conduct investigations. In addition, the Tax Investigators conduct routine compliance inspections, which have resulted in the detection and seizure of illegal, unstamped tobacco products and cash. Based on information obtained during these compliance inspections, members of the SIU team have pursued civil and criminal enforcement actions involving illegal tobacco sales and unlicensed tobacco distributors.

The officials from each of the three states that made presentations to the Task Force shared some common themes as the basis for their successes. First and foremost, they stressed the importance of forming partnerships and cooperating with federal, state and local law enforcement agencies. Such partnerships have allowed these state officials to dramatically increase the geographical reach and footprint of their investigative and enforcement efforts. Second, the officials emphasized that their success has been due in large part to information-sharing efforts, which has helped them to create intelligence databases from which they can all draw vital information to assist with ongoing investigations. The databases have also been instrumental in allowing the officials to better allocate their resources to target areas of investigative and strategic importance.

In addition to partnerships with local law enforcement, the Rhode Island SIU credits their success to their efforts in updating and strengthening their enforcement authority through the legislative process. Specifically, they point to new statutes and regulations which have increased penalties for tobacco law violations, clarified record-keeping requirements relative to the purchase and sale of tobacco products and expanded investigators' authority to search the premises of tobacco dealers and suppliers at all levels of the supply chain. Pursuant to their authority to conduct searches of tobacco retailers, the SIU has completed routine compliance inspections of tobacco retailers in Rhode Island, which have resulted in the discovery and seizure

of illegal, unstamped tobacco products. Such seizures have also led to civil and criminal investigations and enforcement actions involving Rhode Island's tobacco laws.

In terms of best practices, the presenters from Connecticut noted the close similarities between narcotics investigations and illegal tobacco investigations. As a result, they suggested trying to find experienced narcotics investigators (often former police officers) to be part of any tobacco investigations team. In addition to finding personnel with the requisite skills and background, the officials from Connecticut highlighted the need for proper equipment, including surveillance tools and vehicles. They also emphasized the need for a sufficient amount of cash, both to pay informants for actionable tips but also to use in undercover operations as "buy money." The representatives from Connecticut identified outdated tobacco statutes as a primary challenge to their efforts. They suggested that the combination of weak civil and criminal penalties, high profit margins, and the low risk of detection and apprehension have combined to make illegal cigarette trafficking an attractive opportunity for organized crime.

Officials from New York raised some concerns regarding the use of assets seized in connection with tobacco crimes. While recognizing the importance of forfeiture statutes, the Strike Force officials warned against an over-reliance on funds seized from forfeiture activities, as those funds have trailed expectations by a large margin. A principal reason for the shortfall is that, under New York law, seized monies are first applied to unpaid tobacco excise liabilities on the seized contraband; only then are the small leftover amounts shared with partner agencies in the Strike Force. As a result, the Strike Force recommends a stable appropriation from the state to maintain consistent staffing levels. Without a consistent revenue source, ongoing investigations could be compromised. Since concurrent investigations could involve the same or related targets, the Strike Force suggested that any disruption to one investigation may have a cascading effect on other related investigations. Like their Connecticut counterparts, the New York Strike Force officials noted the strong similarities between the trade in illegal narcotics and illegal tobacco and stressed the importance of trained, experienced investigators and prosecutors for successful enforcement efforts.

V. Task Force Activities and Accomplishments

Based on the information gathered and reviewed to date, the Task Force has focused its efforts primarily on its structure, set-up and composition. In recognition of the presentations from the officials from Connecticut, New York and Rhode Island, the Task Force understands the importance of information sharing and working together as a team in order to be effective and to achieve its goals. Given the fact that the Task Force was given a one-time appropriation of \$1 million and the lack of certainty that the Task Force will continue to be funded in future years, member agencies have been understandably reluctant to hire additional personnel to carry out the work of the Task Force.²³ For that reason, the Task Force has prioritized spending on equipment, information technology and hard assets in Fiscal Year 2016 with the expectation that the Task Force will continue to be funded in Fiscal Year 2017 and beyond.

²³ Thus far, member agencies have opted to dedicate existing personnel at their respective agencies, instead of hiring additional employees, to work on Task Force matters.

To that end, Task Force members have discussed the types of resources and expertise each member agency will bring to the Task Force with the understanding that any additional hiring will be contingent on continued funding for the Task Force into future years. As a result of these discussions, each member agency of the Task Force has executed an Inter-Departmental Service Agreement (ISA) which delineates the duties and responsibilities of each member agency with respect to the Task Force. Pursuant to the ISA, the Attorney General has agreed to hire and dedicate an experienced Assistant Attorney General to prosecute Task Force matters. In addition, the State Police will dedicate at least one State Trooper to investigate Task Force matters. The Department of Revenue will dedicate staff and resources from its Audit Division and Criminal Investigations Bureau to assist with the investigation of Task Force matters. The Treasurer will dedicate at least two employees to assist with Task Force matters and to enforce rules and regulations relating to the suspension of retailers' lottery licenses based upon violations of tobacco laws as required by the General Laws. The Executive Office of Public Safety and Security will dedicate personnel to carry out enforcement and investigative activities of the Task Force. Last, but certainly not least, the Department of Public Health will dedicate personnel and information technology resources to help carry out retail compliance inspections in furtherance of the work of the Task Force.

Pursuant to the ISA, each of the member agencies also agrees to share information with the Task Force as needed to carry out the work and mission of the Task Force. In furtherance of this objective, DPH is upgrading its Retail Data Management System (RDMS) using, in part, Task Force funds. The RDMS includes a comprehensive list of Massachusetts retailers that sell tobacco products and, pertinently, provides real-time data from compliance checks, retail product inspections and related enforcement activity. As a result of the ISA, member agencies of the Task Force will have access to the RDMS and its data relating to tobacco retailers. Such access will allow the Task Force to work together to target enforcement and investigative activities in areas where they are deemed to be most useful.

In addition to the RDMS, other member agencies of the Task Force are prioritizing expenditures on tools and equipment that will assist with the Task Force's investigative efforts. Task Force members have discussed their equipment needs with the officials from neighboring states and have taken the advice from those officials into account in assessing their equipment purchases. The Task Force plans to use remaining funds on salary/overtime, training and transportation costs as necessary.

The Task Force has begun working together on coordinated multi-agency investigations, sharing equipment and cooperating with other states. Additional spending on equipment and salary costs during the last quarter of Fiscal Year 2016 will serve to support these ongoing activities. However, the Task Force cautions that investigations often take some time to run their course and to produce actionable, quantifiable and observable results.

VI. Proposed Legislative Changes and Obstacles to Success

As required by its statutory mandate, the Task Force has begun the process of assessing the need for legislative or regulatory changes to facilitate its work. The Task Force is currently undertaking a comprehensive review of the General Laws and related regulations pertaining to tobacco and tobacco enforcement with an emphasis on updating and strengthening certain provisions which were drafted several decades ago and are now out-of-date. In addition to reviewing fines and penalties, the Task Force will be focusing on clarifying definitions, updating forfeiture procedures and modernizing statutory language to reflect current trends and practices. The Task Force expects to complete its review and share it in its next report to the Legislature, which is due no later than July 1, 2016.²⁴

In that report, the Task Force will discuss any administrative or legal barriers to multi-agency action and enforcement efforts. Currently, the biggest obstacle to the operation of the Task Force is the uncertain nature of its funding for future years. Without assurances from the Legislature that the Task Force will continue to receive an appropriation at least at its current level for the next few fiscal years, member agencies are understandably reluctant to hire additional personnel to work on Task Force matters. The member agencies are concerned that if funding is not continued into future years, then their already-thin agency budgets will be required to absorb the salary and benefit costs of any added Task Force personnel should Task Force funding be discontinued. A more stable funding mechanism would eliminate these concerns and member agencies would be able to make their hiring plans accordingly. Of course, additional personnel would allow the Task Force to increase the scale and scope of its activities which, in turn, would allow the Task Force to make an even more meaningful impact on decreasing the illegal tobacco trade throughout the Commonwealth.

VII. Conclusion

The Task Force has spent the past several months gathering information from law enforcement, public health and industry representatives about the illegal tobacco market in and around Massachusetts. In addition, the Task Force has met with revenue personnel from neighboring jurisdictions to discuss their approaches to tobacco law enforcement and their efforts to combat the illegal tobacco trade in their states. Based on all the information that it has received, the member agencies that comprise the Task Force have decided on an organizational structure and framework. To that end, the member agencies have signed an ISA which delineates the duties and responsibilities of each member agency with respect to the Task Force and ensures that member agencies will share information with one another as necessary for the Task Force to fulfill its mission.

²⁴ St. 2015, c. 46, § 184.

Over the course of the next few months, the Task Force will continue to work collaboratively on investigative and enforcement activities. During that time, the Task Force will be undertaking a comprehensive review of existing statutes and regulations pertaining to tobacco and tobacco enforcement, some of which were originally enacted in 1945 and are in need of modernization to reflect current trends and practices. As part of its review, the Task Force will be examining legislative solutions to address not only the illegal trade in cigarettes but also the illegal trade in OTP, which is a smaller but growing segment of the tobacco market. The Task Force anticipates that it will complete its legislative review in time for inclusion of its recommendations for proposed legislative and regulatory changes in its next report, which is due no later than July 1, 2016.