

Commonwealth of Massachusetts

Annual Report of Multi-Agency Illegal Tobacco Task Force

March 1, 2022

An updated Report on the work of 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

As part of the Fiscal Year 2014 General Appropriations Act¹, the Massachusetts Legislature created the Commission on Illegal Tobacco (Commission) to study the magnitude and economic impact of the illegal tobacco market in the Commonwealth. On March 1, 2014, the Commission issued its “Report of Commission on Illegal Tobacco,” which provided a general overview of the illicit tobacco market in Massachusetts and contained a series of findings and recommendations.² One of the Commission’s primary recommendations was the creation of a Multi-Agency Illegal Tobacco Task Force. The Commission recognized that enforcement of the Commonwealth’s tobacco laws was spread across multiple agencies and envisioned the Multi-Agency Illegal Tobacco Task Force as the vehicle by which information and resources could be shared across agencies in order to maximize the effectiveness of enforcement efforts.³ The Commission also recommended a number of statutory changes and updates designed to improve compliance and the collection of tobacco excise taxes.

The Multi-Agency Illegal Tobacco Task Force (Task Force) was created pursuant to section 71 of the Fiscal Year 2016 (FY16) General Appropriations Act.⁴ 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 additional members include the Secretary of Public Safety and Security, State Treasurer, Attorney General, and Commissioner of Public Health, or their respective designees. The Task Force is statutorily required to “coordinate efforts to combat contraband tobacco distribution, including efforts to foster compliance with the law and conduct targeted investigations and enforcement actions against violators.”⁵ Further, the Task Force must:

- (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

¹ St. 2013, c. 38, § 182.

² https://old.taxadmin.org/fta/tobacco/papers/MAcommissionreportonillegaltobacco_030114%20copy.pdf (accessed on February 14, 2022) (hereafter “Commission Report”).

³ Commission Report at pp. 5-6, 26-27.

⁴ St. 2015, c. 46, § 71; M.G.L. c. 64C, § 40.

⁵ M.G.L. c. 64C, § 40(a).

appropriate.⁶

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 by March 1 of each year “on the results of its findings, activities and recommendations from the preceding year....”⁷ 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.⁸ 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 Annual Report of the Multi-Agency Illegal Tobacco Task Force (Annual Report) in compliance with its March 1, 2022, reporting obligation.⁹

II. Results and Trends

During the past year, the Task Force has continued to address several challenges, including a significant expansion of the scope of its investigations due to changes in the tobacco control laws, ongoing issues surrounding the COVID-19 pandemic, and several changes in the Task Force board membership – including two newly designated co-chairs. Irrespective of these challenges, the Task Force has continued to work with federal, state, and local partner agencies to successfully disrupt and intercept sophisticated tobacco smuggling operations.

A. Recent Legal Changes Concerning Tobacco Control

On November 27, 2019, Governor Charlie Baker signed “An Act Modernizing Tobacco Control” into law.¹⁰ The new law resulted in several changes to the law governing tobacco products in Massachusetts. Notable changes include a ban on the retail sale of flavored tobacco products, new regulatory requirements, and a 75% excise tax on the wholesale price of “electronic nicotine delivery systems” (“ENDS”), commonly referred to as “vape”.

Beginning on June 1, 2020, flavored tobacco products, such as menthol cigarettes and flavored cigars, smokeless tobacco, and ENDS products cannot be sold at retail. The sale of these products is now restricted to licensed smoking bars for onsite consumption. The new law sets forth licensure requirements and imposes an excise tax, among other things, concerning the sale of ENDS in Massachusetts, as defined in M.G.L. c. 64C, § 7E(a) broadly (including any component parts, accessories, batteries, etc.) and imposes a 75% excise tax on the wholesale price of all ENDS

⁶ M.G.L. c. 64C, § 40(b).

⁷ St. 2015, c. 46, § 71; M.G.L. c. 64C, § 40.

⁸ *Id.*

⁹ *Id.* For the Task Force’s prior reports, see <https://www.mass.gov/info-details/dor-illegal-tobacco-task-force> (tab entitled “Reports”) (accessed on February 11, 2021). The FY21 Annual Report was filed on March 1, 2021 and the FY20 Annual Report was filed on February 28, 2020.

¹⁰ St. 2019, c. 133.

products.¹¹ The law also requires that ENDS distributors and retailers obtain a Department of Revenue (“DOR”) license.¹²

B. Trends for Tobacco Excise Tax Collection Data

The chart below (**Figure 1**) identifies the tobacco excise tax collected by DOR for FY16 through FY21.¹³ An analysis of the revenue data signifies a longer-term trend related to cigarette excise tax collections and newer trends related to smokeless tobacco, cigars, smoking tobacco, and ENDS.

Figure 1: MA Tobacco Excise Collections Broken Down by Product Category¹⁴

Collections by Type (in Millions of Dollars)	FY16	FY17	FY18	FY19	FY20	FY21
Cigarettes	610.0	582.7	554.6	515.4	486.0	370.6
Smokeless Tobacco	16.7	21.8	22.9	23.1	21.6	12.3
Cigar & Smoking Tobacco	13.7	15.0	16.5	18.2	16.3	15.2
ENDS	N/A	N/A	N/ A	N/A	1.7 ¹⁵	13.3
Totals	640.4	619.5	594.0	556.7	525.6	411.4

Cigarette excise tax collections in FY21 experienced a significant decrease (\$115.4 million) from the prior year, representing a 23.7% decline. This decline is not surprising as it corresponds with a national trend of declining cigarette sales,¹⁶ as well as a decrease in the number of smokers.¹⁷ The percentage of Massachusetts adults who currently smoke cigarettes declined from 14.7% in 2014 to 13.4% in 2018 to 11.1% in 2020.¹⁸

¹¹ M.G.L. c. 64C, § 7E(b).

¹² M.G.L. c. 64C, § 7E(h). DOR license required for those distributors and retailers located within Massachusetts.

¹³ It is important to note that all collections figures cited in this Annual Report exclude sales taxes collected on sales of tobacco products. The Department of Revenue does not separately track sales taxes collected on sales of tobacco products.

¹⁴ The FY21 Tobacco Excise Tax Collections on Cigarettes and ENDS can be found in Commonwealth of Massachusetts Department of Revenue Monthly Report of Collections and Refunds of June 2021. Breakdowns by category provided by DOR Miscellaneous Excise Bureau. See <https://www.mass.gov/lists/blue-book-reports-department-of-revenue> (accessed on February 2, 2022).

¹⁵ The “Act Modernizing Tobacco Control” imposing a 75% excise tax on the wholesale price of ENDS became effective on June 1, 2020, so there is only one month of data available for ENDS excise tax revenue during FY 2020. See The Commonwealth of Massachusetts Department of Revenue Monthly Report of Collections and Refunds of July 2020. <https://www.mass.gov/lists/blue-book-reports-department-of-revenue> (accessed on February 2, 2022).

¹⁶ See <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-report-finds-annual-cigarette-sales-increased-first-time-20> (accessed on February 3, 2022) (reporting an increase in the number of cigarettes sold in the United States from 2019 to 2020).

¹⁷ See https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm (Centers for Disease Control and Prevention, *Cigarette Smoking Among Adults in the United States*, 2019, (accessed on February 3, 2022).

¹⁸ See <https://www.mass.gov/lists/brfss-statewide-reports-and-publications> (Massachusetts Behavioral Risk Factor Surveillance System (BRFSS) data for 2014, 2018, and 2020) (accessed on February 17, 2022).

Revenue related to other tobacco products (“OTP”), which includes smokeless tobacco, cigars, and smoking tobacco, fell for the second consecutive fiscal year. Smokeless tobacco revenues decreased significantly by 43% and cigars and smoking tobacco revenues decreased by 7%.

The Task Force could not identify any trends related to ENDS excise tax revenue at this time due to insufficient data. The ENDS excise tax began on June 1, 2020, so there was only one month of data available during FY20. Based on the July 2020 revenue report, DOR collected \$1.68 million in ENDS excise tax.¹⁹ In future reports, the Task Force will report on any trends related to ENDS excise tax collections.

The Task Force can only speculate as to the reasons for the significant drop in tobacco excise tax revenue between FY20 and FY21. The economic challenges surrounding the ongoing COVID-19 pandemic could explain a portion of the decrease as tobacco users may have limited their discretionary spending on tobacco products. The decline in revenue could also be attributed to passage of the “Act Modernizing Tobacco Control,” which became effective on June 1, 2020 – right before the beginning of FY21.

Prior to the adoption of the “Act Modernizing Tobacco Control,” some analysts predicted that revenue collections could be impacted by the flavor-ban provisions of the law as customers may not choose to substitute non-flavored products for flavored tobacco products. For example, menthol cigarettes accounted for 37% of all cigarettes sold in the United States during 2020. Likewise, flavored smokeless tobacco (menthol, fruit flavored, alcohol flavored, or other flavored) accounted for approximately 54% of all smokeless tobacco products sold in the United States in 2020.²⁰ The same preference for flavored ENDS could also impact revenue collections.²¹

C. Trends for Tobacco Seizure Data

The Task Force has not previously reported on the quantity of tobacco products seized by the State Police or the DOR’s Criminal Investigations Bureau (“CIB”) and Miscellaneous Excise Bureau (“MEB”). This is due to two main reasons. First, there is currently no single repository to track tobacco seizures in the Commonwealth. Second, each Task Force agency has historically used different metrics to quantify the seizures, making any compilation of the data unworkable.

Beginning in November 2021, the Task Force adopted universal metrics for all agencies to track the seizure of tobacco products. Moving forward, the Task Force will be able to better track the types and amounts of tobacco products seized during regulatory inspections or criminal investigations which will allow the Task Force to identify trends and better allocate resources. The

¹⁹ See The Commonwealth of Massachusetts Department of Revenue Monthly Report of Collections and Refunds of July 2020. <https://www.mass.gov/lists/blue-book-reports-department-of-revenue> (accessed on February 2, 2022).

²⁰ See <https://www.ftc.gov/reports/federal-trade-commission-cigarette-report-2020-smokeless-tobacco-report-2020> (accessed on February 9, 2022).

²¹ See <https://academic.oup.com/jnci/article-abstract/113/4/418/5891665?redirectedFrom=fulltext> 89% of current vapers 18-24 years old preferred flavored e-cigarettes (ENDS) (accessed February 11, 2022).

charts below identify the quantities of untaxed tobacco products seized by the State Police (**Figure 2**), DOR (**Figure 3**), and all Task Force Agencies (**Figure 4**) during FY21.

Figure 2: State Police Tobacco Seizures

State Police Tobacco Seizures	FY21
Cigarettes (packs)	40
Smokeless Tobacco (tins/cans/bags)	330
Cigars	3,080
Smoking Tobacco (bags)	96
ENDS	105,802

Figure 3: DOR Tobacco Seizures

DOR Tobacco Seizures	FY21	
	CIB	MEB ²²
Cigarettes (packs)	2,269	3,068
Smokeless Tobacco (tins/cans/bags)	4,166	625
Cigars	6,284	-
Smoking Tobacco (bags)	2	-
ENDS	973	-

Figure 4: Task Force (State Police & DOR) Seizures

Task Force Seizures	FY21
Cigarettes (packs)	5,377
Smokeless Tobacco (tins/cans/bags)	5,121
Cigars	9,364
Smoking Tobacco (bags)	98
ENDS	106,775

As reported in the last several of its Annual Reports²³, the Task Force’s enforcement actions had revealed a disproportionate amount of smuggling activity involving OTP relative to OTP’s share of the overall Massachusetts tobacco market. The Commonwealth’s high tax rates on OTP relative to other states provide smugglers an incentive to import such products from low-tax states and sell them to in-state buyers willing to illegally evade payment of the applicable Massachusetts tobacco

²² The MEB did not develop a detailed tracking system for seized tobacco products until FY22. MEB previously tracked the value of the seized tobacco for tax loss valuations and not the quantity of seized tobacco.

²³ See, e.g. FY19 Annual Report at pp. 5-6; FY20 Annual Report at pp. 5-7; and FY21 Annual Report at pp. 5-7.

excise.²⁴ During the past year, the Task Force has seized less OTP during inspections or criminal investigations compared to previous years. The Task Force will continue to investigate the decline in OTP seizures and report back with findings.

The increase in seizures of flavored ENDS products and menthol cigarettes combined with the decrease in revenue for cigarettes and OTP likely indicates increased cross-border smuggling of these products. Several neighboring states, including New Hampshire, Rhode Island, and Vermont, have reported an increase in tobacco revenue related to cigarettes and OTP during the past year. For example, cigarette excise tax revenue increased approximately 15% between FY20 and FY21 in New Hampshire while OTP excise tax revenue increased approximately 56%.²⁵

Based upon the above data and discussions with the inspectors and investigators conducting the enforcement actions, the Task Force now identifies the cross-border smuggling of untaxed flavored ENDS products, cigars, and menthol cigarettes as the primary challenge for tobacco enforcement in the Commonwealth. Inspectors and investigators are routinely encountering or seizing menthol cigarettes, originally purchased in surrounding states, and flavored ENDS products and cigars purchased from unlicensed distributors operating both within and outside the Commonwealth.

III. Summary of Task Force Activities

The Task Force has continued to meet on a regular basis to share information with member agencies, hear about recent developments in tobacco taxation and enforcement, and to discuss important policy issues.

The Task Force has convened six public meetings in the past year. Each of these meetings was held via videoconference due to the COVID-19 pandemic with notice given in accordance with Sections 18-25 of Chapter 30A of the Massachusetts General Laws and the Governor's Order suspending certain provisions of the Open Meeting Law, M.G.L Ch. 30A §20. These meetings took place on the following dates:

May 3, 2021
August 4, 2021
November 3, 2021
January 11, 2022
February 17, 2022
February 28, 2022

The Task Force held a public hearing on August 4, 2021 to invite input from various members of the tobacco industry, public health communities, and law enforcement agencies.²⁶ The

²⁴ The Massachusetts tobacco excise rate on smokeless tobacco products is 210% of wholesale price (highest in the nation) and the rate on cigars and smoking tobacco is 40% of wholesale price. See <https://www.tobaccofreekids.org/us-resources/fact-sheet/state-excise-tax-rates-for-non-cigarette-tobacco-products> (accessed on February 3, 2022) (updated as of January 12, 2022).

²⁵ See <https://www.revenue.nh.gov/transparency/tobacco.htm> and <https://www.ri.gov/press/view/39616> (accessed February 11, 2022).

²⁶ This meeting, Meeting Number 43, was initially scheduled for June 21, 2021 and postponed due to the COVID-19 pandemic.

Task Force solicited responses to the following questions, in particular:

1. *What methods should the Task Force Member Agencies consider to responsibly store and dispose of electronic nicotine delivery systems that are seized during enforcement actions?*
2. *What types of technology exist that would assist member agencies in determining whether tax has been paid on other tobacco products and electronic nicotine delivery systems (ENDS)?*

The Task Force heard testimony from a retired Special Agent with the New Jersey Department of the Treasury, Office of Criminal Investigation.²⁷ The testimony addressed the hazards of liquid nicotine contained within ENDS and the importance of mitigating those hazards through protective measures when handling the products as well as the proper storage and disposal of the products pursuant to environmental regulations and laws. The testimony noted the rise of counterfeit ENDS products in the United States, often imported unlawfully, and how that can pose challenges for both safety and tax collection. The testimony also addressed technology for verifying the collection of revenue on OTP. While the technology is advancing, until accurate stamping methods are possible, other more conventional methods must be used to identify untaxed OTP. The testimony referenced work being done by the Uniformity Committee of the Federal Tax Administration to adopt and implement uniform invoices and reporting guidelines for all tobacco distribution. The testimony also noted the existence of counterfeit invoices and the challenges that poses for revenue agents or law enforcement to address.

The Task Force has continued to gather information on storage and disposal procedures for seized ENDS products. The Task Force member agencies, specifically DOR and State Police, currently dispose of seized tobacco products through a shredding disposal process that does not work for ENDS products due to the acutely hazardous nature of the liquid nicotine in the products as well as the presence of lithium-ion batteries in the actual ENDS devices. Following the receipt of the above referenced testimony, the Task Force, working with the Massachusetts Department of Environmental Protection (“DEP”), identified the process by which Task Force member agencies can safely and lawfully dispose of ENDS products at the conclusion of the civil or criminal investigations and prosecutions. During the coming months, the Task Force agencies will seek to implement the new procedures, which will include a licensing process with the DEP and US Environment Protection Agency (“EPA”) as well as the use of a HAZMAT transport and disposal contractor to safely dispose of the ENDS products.

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 addition to its regular public meetings, the Task Force continued to successfully collaborate among Task Force agencies to conduct civil and criminal enforcement actions undertaken by the State Police, DOR, and Department of Public Health (“DPH”) – operating through

²⁷ The August 4, 2021 meeting minutes can be accessed and viewed on the Task Force’s website under Meeting 44. See <https://www.mass.gov/lists/dor-2021-illegal-tobacco-task-force-public-meetings>.

the Local Boards of Health (“LBOH”). Certain enforcement activities had to be suspended for a time due to the COVID-19 pandemic, which made some aspects of enforcement impossible. Despite the challenges presented by the COVID-19 pandemic, the Task Force agencies conducted an array of civil and criminal enforcement actions and investigations.

A. Civil Investigations/Inspections

According to DOR records, there are currently 7,270 tobacco retailers and 166 tobacco distributors located in Massachusetts.²⁸ COVID-19 has made it more difficult for the DOR and LBOH to exercise its regulatory authority to conduct in-person inspections and enforce the tobacco control laws.

However, the DOR’s MEB and CIB and LBOH (in collaboration with the DPH) have worked hard to help combat the sale of unlawful tobacco products and tax evasion associated with the tobacco diversion. The charts below (**Figures 5 and 6**) provide inspection data for FY20 and FY21 and the summaries provide examples of significant inspections during the past year:

Figure 5: DOR Tobacco Inspections

DOR Tobacco Inspections	FY20	FY21
MEB Inspections	2,975	3,405
MEB Seizures	7	157
MEB Actions (warning letters, suspensions, revocations)	1	56
CIB Inspections	3	13
CIB Seizures	3	13

- The CIB conducted investigations into four licensed retailers in eastern Massachusetts. Investigators determined the four retailers were regularly purchasing untaxed OTP products from an unlicensed seller over several years. The CIB investigation revealed that the four retailers evaded more than \$1.5 million in OTP taxes. The investigations have been referred to DOR’s Audit Division for further action.
- The CIB and MEB conducted an inspection of a licensed retailer in central Massachusetts and seized a large quantity of untaxed cigar and ENDS products representing more than \$73,000 in unpaid taxes. The matter has been referred for a retailer license suspension.
- The CIB conducted an inspection of a licensed retailer in western Massachusetts and seized a large quantity of untaxed cigarettes and smokeless tobacco products representing more than \$30,000 in unpaid taxes. The matter has been referred for a retailer license suspension.
- The MEB conducted an inspection of a licensed retailer in western Massachusetts and seized a large quantity of untaxed cigarettes and smokeless tobacco products representing more than \$3,500 in unpaid taxes. The matter has been referred for a retailer license suspension.

²⁸ See <https://www.mass.gov/info-details/dor-cigarette-tobacco-and-vaping-excise-tax#licensed-tobacco-retailers-and-distributors-> (accessed on February 4, 2022).

- The CIB conducted two inspections at licensed retailers in southeastern Massachusetts and seized a large quantity of untaxed cigarettes, smokeless tobacco, and ENDS representing more than \$9,000 in unpaid taxes. The matter has been referred for a permanent revocation of the retailer’s cigarette and smokeless tobacco license and a civil fine for distributing ENDS without a license.

Figure 6: Local Boards of Health Tobacco Inspections (POST Data)

LBOH Tobacco Inspections	FY20	FY21
Inspections	2840	4935
Violations Cited ²⁹	650	2178

- The LBOH conducted an inspection of a licensed retailer in central Massachusetts and discovered a quantity of flavored ENDS products. The LBOH contacted the CIB and the untaxed, flavored ENDS products representing more than \$5,400 in unpaid taxes were seized by DOR. The matter is pending further investigation and referral for a retailer license suspension.
- The LBOH conducted an inspection of a licensed retailer in southeastern Massachusetts and discovered a quantity of flavored smokeless tobacco, cigars, cigarettes, and ENDS products. The LBOH contacted the CIB and the untaxed, flavored ENDS products representing more than \$2,800 in unpaid taxes were seized by DOR. The matter is pending further investigation and referral for a retailer license suspension.

During the past year, the DPH updated the Point-of-Sale Toolkit (POST) database that tracks enforcement and inspection visits of tobacco retailers throughout Massachusetts. POST enables DPH and LBOH to record violations of the 2019 tobacco law that restricts the sale of all flavored tobacco and high nicotine content ENDS products. The database allows LBOH to monitor all aspects of the new law, including the presence of signage, documentation of non-flavored product, and product placement.

The updates to POST allowed DPH to monitor the type of violations cited by LBOH during inspections. Most violations were cited for technical or administrative matters, but there were 268 violations issued for selling flavored tobacco products during FY21. DPH and LBOH worked to educate retailers, provide them with new signage, and help them understand the new documentation needed to comply with the law.

DPH Tobacco enforcement staff worked with the CIB to coordinate the sharing of intelligence regarding retail inspection and compliance results. A system was developed so LBOH can share information related to the discovery of potential untaxed flavored tobacco products.³⁰ This

²⁹ It should be noted there could be multiple violations issued during a single inspection.

³⁰ The intelligence sharing program between DPH/LBOH and DOR was created because the 2019 Act Modernizing Tobacco Control is silent regarding LBOH’s authority to seize any flavored tobacco products if located during an inspection. The LBOH has been advised to ask the retailer to box up the flavored tobacco products. However, the LOBH may report the discovery of flavored tobacco products to the DOR for possible follow-up and seizure of any untaxed tobacco products, which could then lead to civil or

collaborative effort has strengthened enforcement efforts.

B. Criminal Investigations

The State Police Detectives assigned to the Attorney General's Office and CIB continued their criminal investigation efforts in conjunction with other law enforcement partners. Below are some highlights from the past year:

- In March 2021, a Springfield man was indicted for tax evasion related to the illegal importation of smokeless tobacco, smoking tobacco, and cigars from Connecticut to various retail locations in Massachusetts. The smuggling involved a loss of over \$4 million in excise taxes. The case is being prosecuted by the Attorney General's Office, with assistance from the State Police and CIB.
- In June 2021, a Milton man pleaded guilty to running an illegal tobacco distribution network, importing tobacco products from distributors in Pennsylvania and selling them via a delivery van to stores and gas stations in Massachusetts. The case was prosecuted by the Attorney General's Office, with assistance from the State Police and CIB.
- In June 2021, a New Hampshire man was arrested and arraigned in connection with a joint state and federal investigation of a major multilevel organization that was illegally distributing untaxed tobacco and ENDS, as well as illegally trafficking marijuana. During the execution of search warrants across several facilities in multiple states, authorities seized approximately 750 pounds of marijuana, 250 cases of illegal vapes, 200 cases of THC infused products, approximately \$540,000 in U.S. currency, four cargo vans, and one luxury SUV. The case is being prosecuted by the Attorney General's Office, with assistance from the Massachusetts State Police, Massachusetts Department of Revenue CIB, Middlesex DA's Office, New Hampshire State Police, New Hampshire Attorney General's Office, New York State Police, Woburn and Stoneham Police Departments, Eliot Police Department in Maine, U.S. Customs and Border Protection, and the U.S. Department of Homeland Security.
- In July 2021, a motor vehicle stop in Uxbridge led to the seizure of a large quantity of untaxed flavored ENDS products, cigars, smokeless tobacco, and cigarettes. The CIB estimated the seizure represented \$21,000 in unpaid taxes.
- In July 2021, the CIB conducted an inspection of a licensed retailer in southeastern Massachusetts and seized a large quantity of untaxed ENDS products and a small quantity of untaxed cigarettes representing more than \$29,000 in unpaid taxes. The matter has been referred for a retailer license suspension and is pending further investigation.
- In November 2021, a Sharon man was sentenced to a two year Continued without a Finding after pleading guilty in October of 2021 to one count of tax evasion related to the illegal importation of smokeless tobacco and cigars from Connecticut to Massachusetts. He is now barred from involvement in tobacco distribution. The case was prosecuted by the Attorney General's Office, with assistance from the State Police and CIB.

- In December 2021, the Attorney General’s Office announced a settlement of its lawsuit against national e-cigarette retailer Eonsmoke and its co-owners for selling nicotine vaping products to minors. The settlement secures nearly \$51 million and orders the company to no longer sell, distribute, market, or advertise tobacco products to Massachusetts consumers. The settlement resolves allegations that the defendants targeted young people through marketing, failed to verify the age of online purchasers, and failed to ensure that shipments were received by a person 21 years or older.
- In February 2022, the State Police served a search warrant at a residence in Brockton and seized 5,802 flavored ENDS, a large quantity of THC products (vapes and edibles), and \$7,000 in US currency. The investigation is ongoing.
- In February 2022, a Westborough man was sentenced in federal court in Worcester to one year in prison and two years of supervised release after pleading guilty in April of 2021 to two counts of trafficking in contraband smokeless tobacco. The case was prosecuted by the United States Attorney’s Office, with assistance from the Bureau of Alcohol, Tobacco, Firearms and Explosives, State Police, and CIB.
- A variety of technical equipment previously purchased by the Task Force has been deployed in furtherance of investigations throughout the past year. Task Force personnel will continue to evaluate the need for additional technical equipment as well as keep up with the latest technologies to further Task Force investigations.

The Task Force has continued to streamline communication with the public and between its member agencies. The Task Force created a fillable Intelligence Referral Form to be used in conjunction with the email tip inbox that goes directly to CIB for review and potential referral to Task Force agencies.³¹

As noted above, the Task Force has utilized a robust, multi-faceted enforcement model whereby the Task Force has suspended tobacco licenses of retailers selling illegal (untaxed) tobacco products; seized and confiscated illegal tobacco products; issued civil assessments for unpaid tobacco excise taxes and penalties; and prosecuted large-scale smugglers for violations of the Commonwealth’s tobacco tax laws. Despite these notable successes, the illegal tobacco market continues to operate, depriving the Commonwealth of millions of dollars in tobacco excise tax revenue.

IV. Legislative Actions

No substantive legislative changes have been made since the “Act Modernizing Tobacco Control” was approved in 2019 and became effective on June 1, 2020.

The FY21 Budget, approved on December 11, 2020, amended M.G.L. c. 64C, § 40 to expand the scope and budget of the Task Force to include ENDS within the Task Force’s enforcement

³¹ See Contact Section at <https://www.mass.gov/info-details/dor-illegal-tobacco-task-force>

efforts.³² The budget increase funded the new enforcement obligations, among other expenditures.³³ The FY22 Budget, approved on July 16, 2021, maintained the same expanded level of funding for the Task Force.

The increased funding has allowed the Task Force to devote additional resources to address cross-border smuggling operations for tax and flavor-ban avoidance. The increased funding has allowed the Task Force to fully fund the maintenance costs and lease payments for the dedicated State Police tobacco storage facility – expected to open within the next few months. The increased funding has also allowed some member agencies to commit more personnel and hours to expand existing tobacco investigations, traditionally focused on OTP, to also now focus upon disrupting illegal and untaxed flavored cigarette, cigar, and ENDS sales.

V. Anticipated Barriers

As discussed in the Task Force’s report last year, increased investigative and enforcement activities have led to the seizure of larger quantities of illegal tobacco, resulting in a strain on the Task Force’s storage capacity for contraband tobacco products. The Task Force expects the State Police tobacco storage facility to be fully functional during the next few months, allowing for more robust investigations and seizures of illegal product. However, with the increase in DOR personnel assigned to the CIB and MEB during the past year as well as the increase in smuggling of flavored, untaxed tobacco products, DOR’s storage capacity is also strained.³⁴

VI. Conclusion and Next Steps

Over the past year, the Task Force has successfully built upon the foundation it established with federal, state, and local law enforcement partners since its creation in 2015. While it has faced challenges concerning the storage of seized product, the slowing of investigative and enforcement activity due to the ongoing COVID-19 pandemic, and changes to the existing laws, the Task Force remains committed to effectively combatting the problems associated with tobacco smuggling. During the coming year, the Task Force plans to review the existing tobacco control laws to recommend to the legislature any updates needed to fight new tobacco smuggling techniques. With the recent law changes concerning the taxation of ENDS and a ban on flavored tobacco products, the Task Force concludes that enhanced communication, information sharing, and targeting of investigative resources to combat contraband sales is just as vital today as it was in 2015.

³² St. 2020, c. 227 §§ 33, 34.

³³ St. 2020, c. 227 § 2, line item 1201-0400.

³⁴ During the past year, DOR has hired four additional MEB Inspectors and four additional CIB Investigators which has allowed for increased tobacco inspections and investigations, thereby resulting in increased untaxed tobacco seizures requiring storage.