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February 28, 2024

The Honorable Michael D. Hurley
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State House
Room 335
Boston, MA 02133

The Honorable Steven T. James
Clerk of the House
State House
Room 145
Boston, MA 02133

The Honorable Susan Moran, Senate Chair
Joint Committee on Revenue
State House
Room 312-D
Boston, MA 02133

The Honorable Mark J. Cusack, House Chair
Joint Committee on Revenue
State House
Room 34
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The Honorable Aaron Michlewitz, Chair
House Committee on Ways and Means
State House
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The Honorable Michael J. Rodrigues, Chair
Senate Committee on Ways and Means
State House
Room 212
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The Honorable Carlos González, House Chair
Joint Committee on Public Safety and Homeland Security
State House
Room 167
Boston, MA 02133

The Honorable Walter F. Timilty, Senate Chair
Joint Committee on Public Safety and Homeland Security
State House
Room 213-B
Boston, MA 02133

Honorable Senators and Representatives:

Pursuant to Chapter 64C, §40(d) of the General Laws, the Multi-Agency Illegal Tobacco Task Force is pleased to file its *Annual Report of Multi-Agency Illegal Tobacco Task Force*.

If you have any questions concerning this report, please contact John H. Hayes, Director of the Criminal Investigations Bureau at the Department of Revenue and my designee to serve as Co-Chair of the Multi-Agency Illegal Tobacco Task Force, at 617-626-3293.

Sincerely,

A handwritten signature in dark ink, appearing to read "G. Snyder", with a stylized flourish at the end.

Geoffrey E. Snyder
Commissioner

Attachment: Report

cc: Matthew J. Gorzkowicz, Secretary of Administration and Finance (Rm. 373)
Representative Ronald Mariano, House Speaker (Rm. 356)
Senator Karen E. Spilka, Senate President (Rm. 332)

Commonwealth of Massachusetts

Annual Report of Multi-Agency Illegal Tobacco Task Force

February 28, 2024

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

Members of the Multi-Agency Illegal Tobacco Task Force

John H. Hayes, *Co-Chair*

Department of Revenue Designee

Lt. Colonel Brian Connors, *Co-Chair*

Massachusetts State Police Designee

Jacqueline Doane

Department of Public Health Designee

Nicole Nixon

Office of Attorney General Designee

Nicholas Ogden

Office of Attorney General Designee

Dan O'Neil

Office of the State Treasurer and Receiver General
Designee

John Melander

Executive Office of Public Safety and Security Designee

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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 to maximize the effectiveness of enforcement efforts.³ The Commission also recommended several 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 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.⁶

¹ St. 2013, c. 38, § 182.

² https://old.taxadmin.org/fta/tobacco/papers/MACommissionreportonillegaltobacco_030114%20copy.pdf (accessed on February 2, 2023) (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).

⁶ M.G.L. c. 64C, § 40(b).

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, 2024, reporting obligation.⁹

II. Results and Trends

During the past year, the Task Force has continued to address several challenges associated with the expansion of the scope of the Task Force’s investigations due to prior changes in the tobacco control laws, including new challenges associated with the storage and destruction of Electronic Nicotine Delivery Systems (ENDS) products. 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. Most 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 products.¹¹ The law also requires that ENDS distributors and retailers obtain a Department of Revenue

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#current-reports> (see tab entitled “DOR Illegal Tobacco Task Force Past Cases & Reports” for prior years) (accessed on January 23, 2024). The FY23 Annual Report was filed on February 28, 2023, and the FY22 Annual Report was filed on March 1, 2022.

¹⁰ St. 2019, c. 133.

¹¹ M.G.L. c. 64C, § 7E(b).

(“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 FY17 through FY23.¹³ 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) | FY17 | FY18 | FY19 | FY20 | FY21 | FY22 | FY23 |
|--------------------------------------|--------------|--------------|--------------|-------------------|--------------|--------------|--------------|
| Cigarettes | 582.7 | 554.6 | 515.4 | 486.0 | 370.6 | 363.9 | 338.7 |
| Smokeless Tobacco | 21.8 | 22.9 | 23.1 | 21.6 | 12.3 | 12.3 | 11.3 |
| Cigar & Smoking Tobacco | 15.0 | 16.5 | 18.2 | 16.3 | 15.2 | 14.5 | 15.3 |
| ENDS | N/A | N/ A | N/A | 1.7 ¹⁵ | 13.3 | 16.3 | 13.9 |
| Totals | 619.5 | 594.0 | 556.7 | 525.6 | 411.4 | 407.0 | 379.2 |

Cigarette excise tax collections in FY23 decreased \$25.2 million from the prior fiscal year. In terms of an overall trend, the decline corresponds to a national trend of declining cigarette sales¹⁶ 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 10.4% in 2022.¹⁸

While smokeless tobacco excise tax collections in FY23 fell by \$1 million from the prior fiscal year, the revenue collected in FY22 and FY23 is well below the high of \$23.1 million collected in FY19. Even while the use of smokeless tobacco among adults in Massachusetts has increased slightly

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 FY22 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 2023. Breakdowns by category provided by DOR Miscellaneous Excise Bureau. See <https://www.mass.gov/lists/blue-book-reports-department-of-revenue> (accessed on January 29, 2024).

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/news/press-releases/2023/10/ftc-releases-reports-cigarette-smokeless-tobacco-sales-marketing-expenditures-2022> (documenting the decrease in nationwide cigarette sales during between 2021 and 2022) (accessed January 29, 2024). See also <https://www.ttb.gov/tobacco/tobacco-statistics> (confirming a 10-year decline in the number of cigarettes manufactured in the United States) (accessed January 29, 2024).

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*, 2021 - Current smoking among adults has declined from 20.9% in 2005 to 11.5% in 2021) (accessed on January 29, 2024).

¹⁸ See <https://www.mass.gov/lists/brfss-statewide-reports-and-publications> (Massachusetts Behavioral Risk Factor Surveillance System (BRFSS) data for 2014, 2018, 2020, 2021, and 2022) (accessed on January 29, 2024).

over the past three years,¹⁹ the overall trend in the decrease of smokeless tobacco revenue is not surprising given the continued national decline in the amount of smokeless tobacco sold (in terms of pounds) over the last several years.²⁰ However, it should be noted that inspectors and investigators in the field have been observing significant amounts of synthetic nicotine pouches on store shelves, as opposed to traditional smokeless tobacco pouches. The introduction and popularity of these new products may be contributing to the decline in smokeless tobacco revenue as the synthetic nicotine pouches do not meet the Commonwealth's definition of smokeless tobacco and are therefore not subject to the Massachusetts smokeless tobacco excise tax.

Revenue related to other tobacco products ("OTP"), which includes smokeless tobacco, cigars, and smoking tobacco, declined overall for the fourth consecutive fiscal year. As noted above, smokeless tobacco revenues declined slightly, while cigar and smoking tobacco revenues increased by approximately 5.3% over the prior fiscal year.

After ENDS excise revenue initially increased \$3 million (22.5%) between FY21 and FY22, ENDS revenue in FY23 declined \$2.4 million (15%) from the prior fiscal year. The reason for the decline in ENDS revenue is not yet clear and will require further research. The amount of data related to the use or sale of ENDS products is still limited since the products are newer to the marketplace than traditional tobacco products. For example, state data indicates that the percentage of Massachusetts adults who currently use ENDS products remains unchanged (5.6%) between 2021 and 2022,²¹ but there is a 46% increase in monthly ENDS sales nationwide between 2020 and 2022.²² Another conflicting data point is that the number of youth (middle and high school) nationwide who currently use ENDS declined between 2022 and 2023.²³ In future reports, the Task Force will continue to monitor changes in the ENDS excise tax collections to identify any longer-term trends.

The Task Force can only speculate as to the reasons for the overall drop in tobacco and ENDS excise tax revenues between FY21 and FY23 – approximately 7.9% over three years. The decline in tobacco excise revenue could be due to the decline in tobacco use identified in the Massachusetts Health Surveys for the past several years.²⁴ However, the ongoing suspected smuggling of untaxed tobacco products into Massachusetts could also be a factor contributing to the decline in revenue.

C. Trends for Tobacco Seizure Data

Beginning in November 2021, the Task Force adopted universal metrics for all agencies to

¹⁹ See <https://www.mass.gov/lists/brfss-statewide-reports-and-publications> (Massachusetts Behavioral Risk Factor Surveillance System (BRFSS) data – smokeless tobacco use among adults increased from 1.5% in 2020, to 1.7% in 2021, to 2.1% in 2022) (accessed on February 1, 2024).

²⁰ See <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-releases-reports-cigarette-smokeless-tobacco-sales-marketing-expenditures-2022> (the amount of smokeless tobacco sold in the United States (in pounds) has declined approximately 13.5% since 2017) (accessed January 29, 2024).

²¹ See <https://www.mass.gov/lists/brfss-statewide-reports-and-publications> (comparing ENDS use by adults in the 2021 and 2022 reports) (accessed on January 29, 2024).

²² See <https://www.cdc.gov/media/releases/2023/p0622-ecigarettes-sales>. (accessed January 29, 2024)

²³ See <https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey> (comparing 2022 and 2023 Annual National Youth Tobacco Survey) (accessed on January 29, 2024).

²⁴ See <https://www.mass.gov/lists/brfss-statewide-reports-and-publications> (accessed on January 29, 2024).

track the seizure of tobacco products. The Task Force now tracks the types and amounts of tobacco products seized during regulatory inspections or criminal investigations. It has been three years since the Task Force began reporting on the quantity of tobacco products seized by the State Police or the DOR's Criminal Investigations Bureau ("CIB") and Miscellaneous Excise Bureau ("MEB"). The new tracking program now allows the Task Force to identify trends and better allocate resources in the future.

The 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 - FY23.

Figure 2: State Police Tobacco Seizures

| State Police Tobacco Seizures | FY21 | FY22 | FY23 |
|--------------------------------------|-------------|-------------|-------------|
| Cigarettes (packs) | 40 | 1,972 | 64 |
| Smokeless Tobacco (tins/cans/bags) | 330 | 15 | 25 |
| Cigars | 3,080 | 785 | 0 |
| Smoking Tobacco (bags) | 96 | 23 | 0 |
| ENDS | 105,802 | 6,406 | 1,326 |

Figure 3: DOR Tobacco Seizures

| DOR Tobacco Seizures | FY21 | | FY22 | | FY23 | |
|------------------------------------|-------------|-------------------|-------------|---------|-------------|--------|
| | CIB | MEB ²⁵ | CIB | MEB | CIB | MEB |
| Cigarettes (packs) | 2,269 | 3,068 | 7,864 | 8,647 | 6,945 | 2,738 |
| Smokeless Tobacco (tins/cans/bags) | 4,166 | 625 | 20,514 | 29,005 | 20,360 | 4,977 |
| Cigars | 6,284 | - | 190,977 | 180,544 | 30,133 | 64,642 |
| Smoking Tobacco (bags) | 2 | - | 161 | 5,069 | 469 | 1,971 |
| ENDS | 973 | - | 33,509 | 31,831 | 14,917 | 20,261 |

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

| Task Force Seizures | FY21 | FY22 | FY23 |
|------------------------------------|-------------|-----------------------|-------------|
| Cigarettes (packs) | 5,377 | 18,483 | 9,747 |
| Smokeless Tobacco (tins/cans/bags) | 5,121 | 49,534 | 25,362 |
| Cigars | 9,364 | 372,306 ²⁶ | 94,775 |
| Smoking Tobacco (bags) | 98 | 5,253 | 2,440 |
| ENDS | 106,775 | 71,746 | 36,504 |

²⁵ 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.

²⁶ It should be noted that the large number of cigars seized during FY22 was primarily due to a single significant seizure by the DOR as part of a CIB inspection. For comparison, the CIB seized only 6,284 cigars in FY21 and 30,133 cigars in FY22.

Generally, the Commonwealth's high tax rates on OTP and ENDS 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 excise.²⁷ While the data set is still limited, the Task Force has seized fewer cigarettes and less smokeless tobacco, cigars, smoking tobacco, and ENDS products in FY23 than FY22. While civil inspections and investigations have increased overall from last fiscal year, seizures of untaxed products have declined which could be due to increased enforcement and improved compliance (see Section III-A below). However, intelligence received from inspectors, investigators, and law enforcement officers working in the field indicates that the smuggling of untaxed tobacco and ENDS products remains a challenge. Field personnel are routinely encountering or seizing untaxed menthol cigarettes, originally purchased in other states, and flavored ENDS products and cigars purchased from unlicensed distributors operating both within and outside the Commonwealth. Without providing too much detail about the processes and methods of Task Force enforcement strategies, smugglers are developing more sophisticated smuggling operations to counter the Task Force's targeted investigations. The Task Force will continue to monitor the Commonwealth's tobacco excise revenues and seizures of untaxed tobacco products to identify any new trends.

III. Summary of Task Force Activities

The Task Force has continued to meet as needed 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 five public meetings in the past year. Each of these meetings was held via videoconference 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 18, 2023
July 18, 2023
January 11, 2024
February 1, 2024
February 28, 2024

The Task Force held a public hearing on May 18, 2023, and member agencies (the State Police and CIB) presented tobacco enforcement case studies to update the public on the types of investigations being conducted by the Task Force. On July 18, 2023, the Task Force heard testimony from a private sector entity about updates on new technologies related to tobacco marking and product tracking. On January 11, 2024, representatives associated with the member agency Department of Public Health ("DPH") provided an updated presentation about the impacts of the Massachusetts Statewide Tobacco Law.

²⁷ See <https://www.mass.gov/info-details/dor-cigarette-tobacco-and-vaping-excise-tax#> (related to the Massachusetts excise tax rate on smokeless tobacco products as 210% of wholesale price (highest in the nation) and the rate on cigars and smoking tobacco as 40% of wholesale price). See also <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-tobacco-enforcement#> (related to the trafficking pattern of smuggling tobacco products from states with low tax rates to states with higher tax rates) (accessed on January 29, 2024).

Pursuant to the Massachusetts Open Meeting Law, detailed minutes of Task Force meetings 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 DPH – operating through the Local Boards of Health (“LBOH”).

A. Civil Investigations/Inspections/Litigation

According to DOR records, there are currently 6,758 tobacco retailers and 146 tobacco distributors located in Massachusetts.²⁸ DOR’s MEB and CIB and LBOH (in collaboration with the DPH) have worked hard to help combat the sale of untaxed tobacco products and/or unlawful tobacco products associated with tobacco diversion. Significantly, DOR has increased the number of inspections by approximately 30% since FY20. The charts below (**Figure 5 and 6**) provide inspection data for FY20 - FY23.

Figure 5: DOR Tobacco Inspections

| DOR Tobacco Inspections | FY20 | FY21 | FY22 | FY23 |
|---|-------------|-------------|-------------|-------------|
| MEB Inspections | 2,975 | 3,405 | 4,236 | 4,203 |
| MEB Seizures | 7 | 157 | 298 | 225 |
| MEB Actions (warning letters, suspensions, revocations) | 1 | 56 | 577 | 394 |
| CIB Inspections | 3 | 13 | 28 | 32 |
| CIB Seizures | 3 | 13 | 28 | 19 |

It is important to note that during FY23, 94% of licensees inspected by the DOR fully complied with the Commonwealth’s tobacco laws and regulations. The summaries below provide examples of significant DOR inspections during the past year.

- The CIB conducted multiple inspections at a licensed retailer in central Massachusetts and seized a large quantity of untaxed ENDS products. As a result of the seizures and repeated violations, DOR revoked the retailer’s ENDS license.
- Based upon a referral from the Western Bristol County LBOH, CIB conducted several inspections of a licensed retailer in southeastern Massachusetts and seized a large quantity of untaxed cigarettes and cigar products from the unlicensed cigar retailer. As a result of the seizures and repeated violations, DOR revoked the retailer’s cigarette/smokeless license.
- The MEB conducted an inspection of a licensed retailer in western Massachusetts and seized a large quantity of untaxed ENDS as well as untaxed cigarettes, smokeless tobacco, cigars, and smoking tobacco. The seized products represented the evasion of approximately \$25,000 in excise taxes. MEB referred this case to CIB for follow-up and the matter has been referred for a tobacco license suspension.

²⁸ Licensee information obtained from DOR MEB, but see also <https://www.mass.gov/info-details/dor-cigarette-tobacco-and-vaping-excise-tax#licensed-tobacco-retailers-and-distributors-> (accessed on January 23, 2024).

- The MEB conducted an inspection of a licensed retailer in western Massachusetts and seized a large quantity of untaxed ENDS, cigarettes, cigars, and smoking tobacco. The seized products represented the evasion of approximately \$26,000 in excise taxes. MEB referred this case to CIB for follow-up.
- The MEB conducted an inspection of a licensed retailer in western Massachusetts and seized a large quantity of untaxed cigars resulting in the evasion of approximately \$6,000. MEB referred this case to CIB for follow-up and the matter has been referred for a tobacco license suspension.

The Litigation Bureau within the General Counsel’s office is another important part of DOR’s civil tobacco enforcement team. The tobacco seizures, license suspensions, and audit assessments generated by CIB and MEB are sometimes appealed to the Appellate Tax Board (“ATB”). The Litigation Bureau, comprised of dedicated civil attorneys, defends the DOR Commissioner before the ATB. Since January of 2021, DOR has successfully managed 228 ATB appeals, having secured significant license suspensions without the need for a trial. However, the Litigation Bureau has maintained a perfect 7 for 7 record on tobacco license suspension trials before the ATB. CIB and MEB will continue to work very closely with the Litigation Bureau to further the Task Force’s mission.

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

| LBOH Tobacco Inspections | FY20²⁹ | FY21 | FY22 | FY23 |
|---------------------------------|--------------------------|-------------|-------------|-------------|
| Inspections | 2840 | 4935 | 6290 | 6342 |
| Violations Cited ³⁰ | 650 | 2178 | 2080 | 1514 |

LBOH inspectors completed 6,342 tobacco retail inspections in FY23, which represents a 122% increase since FY20. The great majority of inspections during FY23 indicate retailers complied with local and state laws with a compliance rate of approximately 76%. The violations indicated are reflective of both state and local policy violations and are the total number of violations found, not violations per unique retail establishment. The summaries below provide examples of significant LBOH inspections during the past year.

- LBOH received an anonymous complaint regarding the sale of flavored ENDS products at an Adult Only Retail Store (AORS) in northeastern Massachusetts. The LBOH conducted an inspection and discovered a considerable number of flavored ENDS products. The LBOH inspector contacted MEB which responded to the retail location and conducted an inspection. MEB inspectors seized over 2,800 untaxed ENDS products which represented approximately \$37,000 in unpaid ENDS excise taxes. The LBOH issued an immediate cease-and-desist order indicating the location posed an immediate threat to public health. The LBOH inspection led to the permanent revocation of the local permit.

²⁹ In FY20 and FY 21, the number of inspections is lower than average because the DPH and LBOH temporarily suspended retail tobacco inspections during the initial phase of the COVID-19 pandemic.

³⁰ It should be noted there could be multiple violations issued during a single inspection.

- LBOH received complaints locally and from the state’s complaint line that a store in southeastern Massachusetts was selling flavored tobacco products. The LBOH conducted a routine inspection and located illegal tobacco products hidden in a backroom closet. The LBOH inspector contacted CIB which responded to the location. CIB conducted an inspection and seized flavored, untaxed cigarettes, cigars, and ENDS products. The store received a local license suspension and a tobacco license suspension through the DOR.

During the past several years, 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 all state and local policies. LBOHs monitor and collect information on compliance and violations, from signage, product types, 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 428 violations issued for selling flavored tobacco products during FY23 – which is an increase from last fiscal year (267). That said, most retailers complied with flavor regulations during both years, with a 93% compliance rate in FY23. The 428 violations identified represent the total number of violations in retailers, not the unique number of retailers in violation. The increase seen could have various contributing factors such as the continuously changing landscape of products and labeling, new retailers, and potentially mirrors national trends of illegally imported flavored tobacco. These findings indicate the need for continued data collection, compliance resources, and enforcement coordination to uphold state policy protections. DPH and LBOH continue to provide retailer education, resources, and signage to support compliance with tobacco policies.

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.³¹ This 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:

- CIB conducted an investigation which revealed that a man who owned and operated a Merrimack Valley tobacco retailer regularly purchased untaxed OTP from an unlicensed distributor over the period of several years and sold the untaxed products at the retail store. The smuggling scheme resulted in the evasion of approximately \$200,000. The investigation has been referred to DOR’s Audit Division for assessment.
- In May of 2023, Mansfield PD and State Police investigators seized untaxed flavored ENDS products (to include THC ENDS products) following an investigation and search of a residence.

³¹ 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 LBOH 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 criminal penalties.

This case is being prosecuted by the Bristol County District Attorney's Office.

- In May of 2023, a Billerica man pleaded guilty to Tax Evasion in Middlesex Superior Court and was sentenced to one year House of Corrections (three months to serve) and 3 years of probation. The individual purchased large quantities of untaxed OTP in Connecticut and sold the products in Massachusetts which resulted in the evasion of more than \$500,000 in tobacco excise taxes. The case was prosecuted by the Middlesex District Attorney's Office with assistance from CIB. The investigation has been referred to DOR's Audit Division for assessment.
- CIB conducted an investigation which revealed that a licensed retailer in southeastern Massachusetts purchased a large amount of untaxed ENDS products from an out-of-state unlicensed distributor and sold the products at the retail store. The smuggling scheme resulted in the evasion of approximately \$188,600. The investigation has been referred to DOR's Audit Division for assessment and the revocation of the retailer's ENDS license.
- In June of 2023, the State Police arrested a Lynn man in possession of untaxed flavored ENDS products, marijuana, and US Currency. This case is being prosecuted by the Essex County District Attorney's Office.
- Based on information received from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), CIB conducted an investigation which determined that a licensed retailer located in western Massachusetts purchased large amounts of untaxed OTP and ENDS products from five (5) out-of-state unlicensed distributors for resale at the retail store. The smuggling scheme resulted in the evasion of approximately \$658,900 in unpaid taxes. The investigation has been referred to DOR's Audit Division for assessment.
- In June of 2023, the State Police arrested a Boston man in possession of untaxed flavored ENDS products as well as marijuana. He was charged with tax evasion. The case is being prosecuted by the Plymouth County District Attorney's Office.
- CIB conducted an investigation which revealed that a licensed retailer in western Massachusetts purchased a large amount of untaxed OTP and ENDS products from an out-of-state unlicensed distributor and sold the products at the retail store. The smuggling scheme resulted in the evasion of approximately \$686,000. The investigation has been referred to DOR's Audit Division for assessment.
- In October of 2023, the State Police arrested a Malden man in possession of untaxed flavored ENDS products as well as Class C and Class D controlled substances. He was charged with tax evasion and motor vehicle offenses. This case is being prosecuted by the Middlesex County District Attorney's Office.
- In November of 2023, the State Police arrested a Randolph man while in possession of flavored ENDS products. He was charged with Tax Evasion and Motor Vehicle Offenses. This case is being prosecuted out of the Plymouth District Attorney's Office.
- In December of 2023, a Mashpee man, the owner of two Cape Cod tobacco retailers, pleaded guilty to tax evasion, failing to file tax returns, failing to pay taxes, and failing to supply

records to the DOR and was sentenced to one year in the House of Correction, suspended for a probationary period of two years, and \$50,000 in restitution. The investigation conducted by CIB revealed that the business owner regularly purchased untaxed OTP from an unlicensed distributor and sold the untaxed products at his retail locations which resulted in evasion of more than \$300,000. The case was prosecuted by the Cape & Islands District Attorney's Office. The matter is being referred to DOR's Audit Division for assessment.

- In January of 2024, CIB and the State Police executed a search warrant related to a licensed tobacco distributor in southeastern Massachusetts. The CIB investigation determined the distributor was purchasing untaxed smokeless tobacco, cigars, and ENDS products from unlicensed out-of-state distributors and reselling the products to local retailers. The search warrant resulted in the recovery of a significant amount of untaxed tobacco and ENDS products representing the evasion of approximately \$60,000. The investigation will be referred to DOR's Audit Division for assessment and revocation of the distributor's licenses.
- In February of 2024, the State Police along with CIB, the Woburn and Worcester Police Departments, and Homeland Security Investigations executed 29 search warrants on businesses, residences, vehicles, individuals, and bank accounts. Investigators seized approximately 280,000 flavored ENDS products as well as flavored cigars and unstamped cigarettes. Investigators also seized approximately seventy (70) pounds of marijuana packaged for distribution, hundreds of cases of THC and Psilocybin-laced products (Class C Controlled Substances), multiple jars of pure THC oil and THC crystalline, and one unsecured firearm. Investigators also seized over \$1 million as proceeds of the illegal sales of these products. State Police arrested a New Hampshire man on two counts of Possession with Intent to Distribute a Class C Substance and Possession with Intent to Distribute a Class D Substance. This investigation, which is being prosecuted by the Attorney General's Office, remains open and ongoing.

The Task Force has continued to streamline communication with the public and between its member agencies. The Task Force began utilizing social media to announce meeting dates and topics, which has increased attendance.

As noted above, the Task Force has utilized a robust, multi-faceted enforcement model whereby the Task Force has suspended tobacco licenses of retailers or distributors selling illegal (untaxed) tobacco products; seized and confiscated illegal tobacco products; issued civil assessments and penalties for unpaid tobacco excise taxes; 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 Proposals

No substantive legislative changes have been made to the tobacco revenue or compliance laws 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

efforts.³² The budget increase funded the new enforcement obligations.³³ The FY24 Budget, approved on August 9, 2023, maintained the same funding level for the Task Force.

Pursuant to its statutory mandate, the Task Force is charged with making recommendations to the legislature, “to strengthen operations and enforcement efforts and reduce or eliminate any impediments to those efforts.”³⁴ During 2022 and early 2023, the Task Force held several public meetings to discuss statutory and regulatory changes that could improve enforcement efforts by enhancing certain civil and criminal provisions and updating regulatory and administrative procedures. The Task Force has no changes to the previously approved recommendations. Below is a summary of the recommended changes to existing tobacco enforcement laws and regulations.³⁵

M.G.L. c. 62C § 16 (Filing of Returns):

- Change timing of payment of excise tax for unlicensed wholesalers/distributors (i.e., retailers purchasing from unlicensed distributors) of smokeless tobacco, cigars/smoking tobacco, and ENDS so that returns are filed upon purchase or importation of untaxed products. This would correct existing inconsistency between timing of filing returns for different tobacco license types.

M.G.L. c. 62C § 68 (Suspension/Revocation of Licenses):

- Add language that conviction for violation of chapter 64C or federal tobacco trafficking statutes could serve as basis for suspension/revocation of tobacco license.
- Add language that a licensee’s refusal to allow DOR access to conduct inspection is grounds for suspension/revocation of license.
- Amend appeals language so licensee is required to notify DOR commissioner of appeal and file bond before appeal hearing can take place – consistent with current DOR Administrative Policies and M.G.L. c. 58A § 9.

M.G.L. c. 62C § 73 (Tax Evasion):

- Amend tax evasion criminal sentencing provision to change “imprisonment for not more than five years” to “imprisonment in the house of correction for not more than 2 ½ years or state prison for not more than 5 years...” None of the tobacco-related criminal statutes include this jail/prison distinction, which is common in other criminal statutes.
- Authorize DOR/CIB investigators to file criminal complaints pursuant to Chapter 218 § 35A.

M.G.L. c. 64C § 1 (Definitions):

- Modify definitions to update language and resolve conflicts/confusion. For example, “tobacco products” does not include cigars and smoking tobacco under current definition.

³² St. 2020, c. 227 §§ 33, 34.

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

³⁴ M.G.L. c. 64C § 40(d)(iii)

³⁵ DOR has completed a draft document containing the detailed changes summarized in this report.

M.G.L. c. 64C § 5 (Record Keeping):

- Modify language to require cigarette licensees to maintain records on-site for cigarette and smokeless tobacco.
- Add civil penalty for hindering, obstructing, or preventing authorized DOR inspection.

M.G.L. c. 64C § 7B (Cigars):

- Add on-demand inspection authority for cigar and smoking tobacco products.
- Add records as an item to be seized in addition to untaxed cigars/smoking tobacco.

M.G.L. c. 64C § 7E (ENDS):

- Add on-demand inspection authority for ENDS products.
- Add records as an item to be seized in addition to untaxed ENDS products.

M.G.L. c. 64C § 8 (Prosecution for Illegal Possession):

- Modernize language (apply to all tobacco products) and remove outdated sections.
- Add reference to the new Section 10 criminal provision (see below).

M.G.L. c. 64C § 10 (Tobacco Trafficking & Penalties):

- Create a new criminal provision for Dealing in Tobacco Products without a License. This would create a criminal provision that applies to the trafficking and associated tax evasion for all tobacco products, with the amount of tobacco sold or possessed with intent to sell serving as the basis for a misdemeanor or felony charge. This provision would apply to individuals as well as licensees who are acting outside the scope of their license (e.g., a retailer acting as an unlicensed distributor).
- Require payment by licensee to purchase tobacco products be in the form of a check, EFT, or credit/debit card (cash payment prohibited) and impose civil and criminal penalties for violations. This will create transparency and allow more efficient and effective civil and criminal enforcement of the tobacco laws.
- Add civil penalty for violation of new criminal provision of Dealing in Tobacco Products without a License.
- Add authority for DOR/CIB investigators to file criminal complaints pursuant to Chapter 218 § 35A.

M.G.L. c. 64C § 11 (Records/Reporting):

- Clarify DOR authority to examine cigarettes and smokeless tobacco products in addition to records.

M.G.L. c. 64C § 34 (Possession Unstamped Cigarettes):

- Add house of correction and prison sentence language (see M.G.L. c. 62C § 73 above).

M.G.L. c. 64C § 35 (Possession/Transportation of Unstamped Cigarettes):

- Add house of correction and prison sentence language (see M.G.L. c. 62C § 73 above).

M.G.L. c. 64C § 38A (Seizure/Forfeiture of Unstamped Cigarettes & Smokeless Tobacco):

- Add records as an item to be seized in addition to untaxed cigarettes & smokeless tobacco.

The Task Force finds that the above legislative recommendations are necessary so the Task

Force can effectively disrupt illegal tobacco trafficking and reduce, as well as recover, lost revenue.

V. Anticipated Barriers

Aside from the challenges associated with the above legislative recommendations, the Task Force's increased investigative and enforcement activities during the past year have again led to the seizure of large quantities of illegal tobacco products, resulting in a strain on the Task Force's storage capacity. As noted in last year's annual report, while the State Police tobacco storage facility is operational, DOR's storage capacity has not kept pace with the increase in seizures. DOR is still in the process of leasing additional tobacco storage facilities in western and eastern Massachusetts to increase storage capacity and allow for continued increased enforcement. It is anticipated that the new storage facilities will be operational in FY25.

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 there are still challenges concerning the storage of seized products, the disposal of ENDS, and much needed changes to the existing laws, as noted above, the Task Force remains committed to effectively combatting the problems associated with tobacco smuggling.