



Contact: Public Affairs Division
(202) 648-8500

March 2012
www.atf.gov

ATF TOBACCO DIVERSION

Purpose

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is the federal law enforcement agency with primary jurisdiction over the Contraband Cigarette Trafficking Act (CCTA) to stop tobacco diversion. The CCTA was enacted in 1978 and was amended in 2006 with the re-authorization of the Patriot Act. The CCTA specifically addresses the interstate transportation, possession and sale of non-state tax paid cigarettes and smokeless tobacco. The CCTA was enacted to combat structured and organized criminal groups that derive significant financial gain through illicit and contraband tobacco diversion.

Authority

These statutes and charges have been used in ATF tobacco diversion investigations:

- Title 18 U.S.C., Section 2342 – The Contraband Cigarette Trafficking Act makes it illegal to possess more than 10,000 unstamped cigarettes in a state which requires a tax stamp.
- Title 18 U.S.C., Section 2343 – Requires that any person who distributes more than 10,000 cigarettes to keep accurate records pertaining to the shipment, receipt, sale and distribution of cigarettes.
- Title 18 U.S.C., Section 2320 – Trafficking in counterfeit cigarettes.
- Title 15 U.S.C., Section 375 – The Prevent All Cigarette Trafficking Act (the amended Jenkins Act) makes it illegal to ship cigarettes to a non-licensee in a state without notifying the state taxation authority.
- Internal Revenue Code – Imposes a \$1.08 per pack federal tax and requires a permit for manufacturers and importers. ATF coordinates with the U.S. Department of Treasury Alcohol and Tobacco Tax and Trade Bureau to enforce this law.
- Title 26 U.S.C., Section 5762 – Failure to pay the federal excise tax on tobacco products.
- Title 18 U.S.C., Sections 1341 and 1343 – Mail and wire fraud.
- Currency Reporting Act – Failure to report currency transactions over \$10,000.
- Title 18 U.S.C., Section 1956 – Money laundering.
- Racketeering Influenced and Corrupt Organizations.
- Aiding and Abetting.
- Conspiracy.

Mission

ATF's primary goal in tobacco enforcement is to enforce the federal laws relating to tobacco diversion and protect the revenue of the federal and state governments. Because of the diversity of crimes involved in the tobacco black market, ATF often charges defendants with violations other than, or in addition to, Contraband Cigarette Trafficking Act violations.

There are two types of tobacco traffickers who move black market tobacco products. The first is the "casual" smuggler. These include smokers who may cross a state line to purchase cheaper cigarettes because of the varying state excise taxes. The second type is the "commercial" smuggler which includes structured or organized groups.

People who engage in the manufacturing and distribution of contraband tobacco products reap substantial profits by avoiding payment of federal and state excise taxes. Legal entities pay significant taxes on their product, including \$1.08 per pack in federal excise tax, from \$0.17 to \$4.35 per pack in state and local excise taxes, and typically \$0.60 per pack to a settlement fund for health care costs incurred by the states as a result of tobacco use by their citizens.

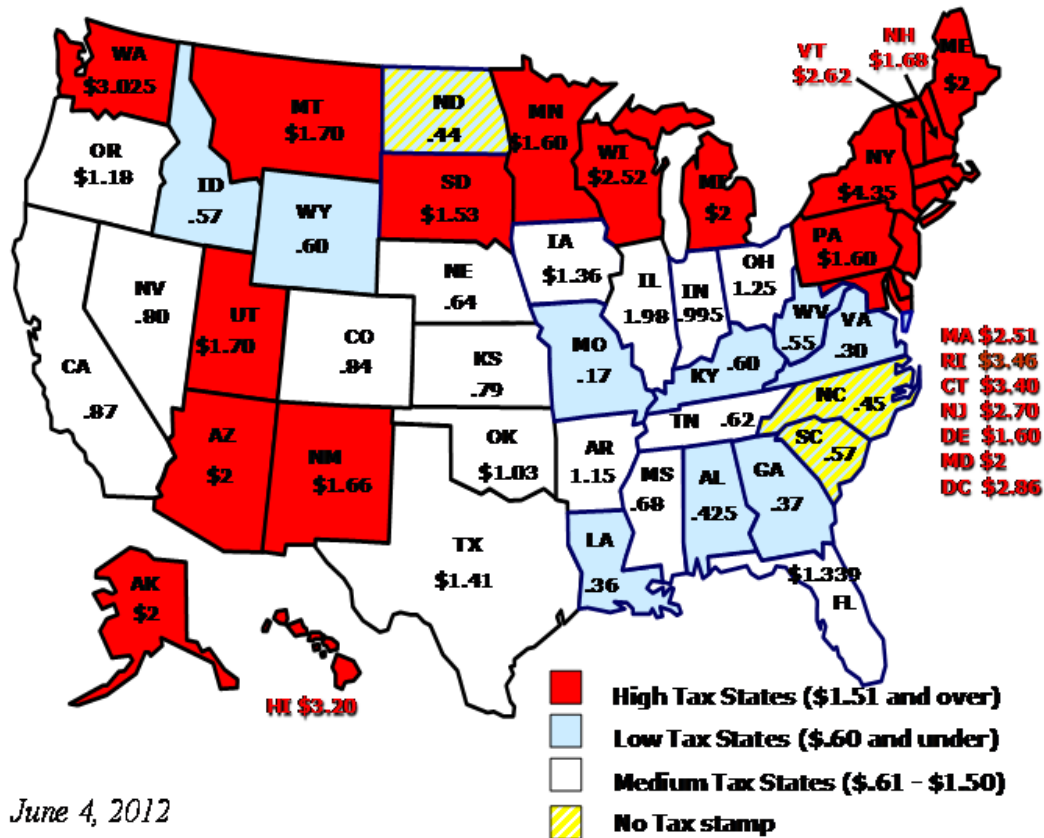
The potential financial gain of tobacco smuggling is immediately apparent. By selling non-tax paid cigarettes at, or just below "tax paid prices," criminal organizations net a substantial profit. For example, purchasing legally taxed products in Virginia (a low excise tax state) for approximately \$4.50 a pack, and transporting them for resale to New York City (a high excise tax city in a high excise tax state), where a pack sells for approximately \$13, creates an estimated \$8.50 per pack profit margin. In this example, a single carton (10 packs) yields \$85 in profits; a single case (60 cartons) yields \$5,100 in profits and a single truckload (typically 800 cases) yields \$4,080,000.

Organized criminal groups, including those with ties to terrorist organizations, have increasingly engaged in the illegal trafficking of tobacco products, particularly counterfeit cigarettes. Prior to 2003, ATF averaged about 40 new diversion investigations annually. From FY 2003 – FY 2011, ATF has initiated a total of 1,164 tobacco diversion investigations, with an average of 129 investigations per year.

Through tobacco diversion investigations, ATF disrupts and dismantles criminal organizations by indentifying and arresting offenders who traffic illegal tobacco products. In addition, ATF conducts financial investigations in conjunction with ongoing criminal investigations in order to seize and deny further access to assets and funds used by criminals and terrorist organizations.

State Cigarette Tax Rates

Per 20 stick Pack



As of June 4, 2012

Source: www.tobaccofreekids.org

*Cigarettes tax rates in effect by July 1, 2012

MN \$1.58 increase \$1.60

DC \$2.50 increase \$2.86

IL .98 increase \$1.98 (effective on 6/24/2012)

ATF faces several challenges enforcing federal laws to counter tobacco smuggling. Some tobacco businesses that sell over the Internet or through mail order are not in compliance with the Prevent All Cigarette Trafficking (PACT) Act. The PACT Act requires businesses to report their sales of tobacco to appropriate state revenue agencies so state taxes can be assessed.

The trade of counterfeit tobacco products is also a rapidly growing global problem. Smokers who are tricked into buying fake cigarettes don't get the product they're expecting. While all cigarettes are dangerous and cause disease, counterfeit cigarettes have been reported to contain higher levels of tar, nicotine, and carbon monoxide than genuine cigarettes. Furthermore, many are even contaminated with sand and other packaging materials, such as bits of plastic. Since these are illegally manufactured and imported cigarettes, consumers do not know what ingredients are used to manufacture these cigarettes. Counterfeit cigarettes pose a greater health risk to consumers for this reason.

Counterfeit cigarettes have a direct impact on the U.S. economy since no federal or state taxes or Master Settlement Agreement payments are made. This differs from contraband cigarettes where the federal taxes may be paid by the manufacturer, but where the state taxes are generally not paid.

Like all black market cigarettes, counterfeit cigarettes are used by many organized crime organizations because of the substantial profits that are generated through tobacco diversion. Much of these profits are used by these organizations to fund other criminal activities, including international money laundering and possibly terrorism.

Legitimate tax stamps are used to assist in the identification of state tax-paid cigarettes. Many tobacco traffickers use counterfeit tax stamps to save the cost of paying the state excise tax on the genuine manufactured cigarettes. It is cheaper for the black market trafficker to buy counterfeit stamps than to pay the state excise tax.

For more information on ATF's programs, please visit the website at www.atf.gov.

###