

Appeals and Penalties Breakout Working Group

Potential Issues

Penalties

- Monetary Penalties:

Penalties looked at in conjunction with Appeals? **[J. Smith, VWDA]**

More clear division of penalties between error/negligence and criminal activity?

Most localities- presumption exists that there is an attempt to evade the tax for possession of 60 packs or more unstamped cigarettes. For the State, presumption exists that there is an attempt to evade the tax for possession of 30 packs or more. **[J. Smith, VWDA]**

Should local penalties be the same as or similar to the State penalties? **[G. Peyton, Retail Federation]**

- Develop suggested best practices for local penalty structure?
Consistency between localities and with the State **[M. Ballard, Retail Federation]**

Some acknowledgement of mechanical error **[J. Smith, VWDA]**

- How specific should these be?

Recommendations more than mandates with more uniformity between localities as the goal **[J. Smith, VWDA]**

- Task for local governments in conjunction with industry?

- Increasing penalties based on multiple infractions?

- Basing penalties on the number of cigarettes in inventory?

Local standards instead of best management practices **[J. Smith, VWDA]**

- Reviewing the taxpayer's records for stamping machine maintenance when evaluating penalties

- What is the industry standard?

This would be more important for cases of partial stamps, not necessarily for unstamped cigarettes. Unstamped cigarettes can be found with a retailer through no fault of a stamping agent. **[P. Carey, NVCTB]**

- Seizure of Cigarettes

In some localities the city/county attorney is the one seizing, is this proper? **[M. Ballard, Retail Federation]**

City/County Attorneys can handle violation of the locality's ordinances if so choose- and do have power to seize. **[R. Warren, Arlington County]**

Serious issue with localities that have no appeals process set out for seizure of cigarettes. Best way to handle the situation? **[J. Smith, VWDA]**

Challenge invalid ordinances through court system? **[T. Adams, representing Sheetz]**

May be prohibitive for first challenger **[J. Smith, VWDA]**

Information will be sent through the Local Government Attorneys of Virginia regarding requirement that notice be given when seizing property setting forth appeals procedures and affirmative defenses that may be asserted. **[R. Warren, Arlington County]**

- Should retailers/stamping agents be allowed the opportunity to be heard/ opportunity to inspect before the formal appeal?
Without inspection stamping agents can't tell if it was their mistake or if the retailer bought cigarettes from someone else. **[J. Smith, VWDA]**
Possible alternative- NVCTB- uniform detailed seizure cigarette form with stamp number that could be used to determine **[P. Carey, NVCTB]**
- Should cigarettes be destroyed or auctioned off?
 - How long should local government wait before doing so?
Hard to appeal without evidence- hold seized cigarettes until appeal or time limit to request appeal? **[J. Smith, VWDA]**
- Education- Industry and Local Governments should both provide education to retailers regarding inspection for stamps **[G. Peyton, Retail Federation]**
Add as Best Practices for both Industry and implementation of local cigarette tax?

Appeals

- Develop a uniform local appeals process?
 - Task for local governments in conjunction with industry?
 - Should time limits be put in place?

NVCTB appeals process could be used as a best management practices? **[P. Carey, NVCTB]**

Can be sent around to localities even if not official best management practices as example as what needs to be provided.

Mandated appeals process? **[M. Ballard, Retail Federation]**

Localities would probably be opposed to a specific mandate versus setting out best management practices for details **[P. Carey, NVCTB]**

Set out milestones for appeals process for seizures in legislation without details, probably not for general appeals of assessments. Details could be set out in best management practices. **[T. Adams, representing Sheetz]**

Legislation could be similar to BPOL statute
Would have a hold period if seizing cigarettes

Would need to harmonize with general appeals of assessments statutes **[R. Warren, Arlington County]**

- Allow stamping agents the right to participate in appeals?
 - Legal concerns? – State allows stamping agent to assume liability and then appeal

Need for the stamping agent to determine if it is their mistake in order for the stamping agent to join appeal or take on the liability of the assessment. **[J. Smith, VWDA]**

- Should local governments be required to publish appeals process?
 - While some localities have the appeals process set out in the ordinance, others do not.

- Stamp visibility

While this may be an issue, there seems to be agreement that this is outside the scope of this report. **[J. Smith, VWDA]**