



### **WV Wholesalers Association Joins with OMEGA WV to Have September Proclaimed We Card Month**

The WV Wholesalers Association joined with OMEGA WV in September requesting that Governor Tomblin proclaim West Virginia as We Card Month, which he did. The proclamation said:

**Whereas**, West Virginia law prohibits the sale of tobacco and other age-restricted products to persons under the age of 18; and

**Whereas**, the West Virginia Oil Marketers and Grocers Association and the West Virginia Wholesalers Association will participate in "We Card" Awareness Month, a retail education and training effort to boost West Virginia retailers' awareness of and participation in responsible retailing efforts to comply with federal, state and local laws and identify, prevent and deny tobacco and other age-restricted product sales to minors; and

**Whereas**, the national non-profit organization, The "We Card" Program, Inc., is designed to provide training and education to the

retail community to help retailers comply with age-restricted product laws and serve their communities as responsible retailers; and

**Whereas**, through The "We Card" Program Inc., in-store training and education materials, online training programs, and the mystery shopping service "ID Check-Up" are available to all West Virginia retailers on We Card's website, [www.wecard.org](http://www.wecard.org); The "We Card" Program, Inc., is also endorsed by the West Virginia Oil Marketers and Grocers Association and the West Virginia Wholesalers Association; and

**Whereas**, if we work together, West Virginia will benefit from responsible retailing community that successfully prevents tobacco and other age-restricted product sales to minors.



## From the Director

On the legislative front here in West Virginia, we are paying special attention to the Joint Committee on Tax Reform. In this issue we have highlighted much of what the committee has covered in their meetings. They have the following meeting schedule for the balance of the year:

- October 20, 2015
- November 2, 2015
- December 7, 2015

The Committee hopes to have legislation in January. If you would like to see all of the presentations go to: <http://www.legis.state.wv.us/committees/interims/committee.cfm?abb=tax>. Scroll down to the 2015 tab to see the list beginning with April and going through September.

The July proposal to fix Monongalia County's roads by establishing a surcharge on alcohol and tobacco products is worrisome to many of us. Tom Bloom, the president of the Monongalia County Commission, stated "the proposed additional sin tax is a measure the Legislature could consider as either a pilot project for Monongalia County or a statewide project, with counties choosing to be a part of the program. We continue to watch this closely.

We are focusing a great deal on the 2016 elections. I can't believe how many fundraisers have already been held to date. We realize how important it is to support and help get candidates elected who understand our industry and think like we do. If you haven't donated to the WHOLE PAC yet, we hope that you will consider doing so.

We will be publishing our *Membership Directory* in November. I would like to encourage you to support the Association by placing an advertisement in this publication.

*Jan*

---

**Now, Therefore,** Be it Resolved that I, Earl Ray Tomblin, Governor of the Great State of West Virginia, do hereby proclaim September 2015, as:

### *"We Card" Awareness Month*

in the Mountain State and encourage all retailers to participate by letting their customers know that "In West Virginia, we don't sell tobacco and other age-restricted products to kids,"

**In Witness Whereof,** I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

**Done at the Capitol,** City of Charleston, State of West Virginia, this the first day of September, in the year of our Lord, Two Thousand Fifteen, and in the One Hundred Fifty-Third year of the State.

## State Update

### **State Budget Balanced; But State Behind Heading into New Fiscal Year**

The state ended the fiscal year June 30 some \$60 million off in revenue collections but the state budget finished balanced because of a number of moves made by the Tomblin administration and members of the state legislature.

The revenue numbers were released by state Revenue Secretary Bob Kiss on July 2nd. Collections totaled more than \$4 billion but missed estimates mainly because of a downturn in severance tax collections from coal and natural gas.

Collections totaled more than \$4 billion but missed estimates mainly because of a downturn in severance tax collections from coal and natural gas.

A state worker hiring freeze remains in effect in the new fiscal year but Kiss said some other options will need to be explored because the freeze isn't generating the savings it did when it was first put into effect two years ago.

Tax collection estimates for both personal income and consumer sales tax were almost met last budget year. Kiss said that's a positive.

The state released the following highlights of the recently completed budget year:

#### **Personal Income Tax**

- ◆ After declining by 2.2 percent in Fiscal Year 2014, Personal Income Tax collections grew by 10.4 percent in Fiscal Year 2015, a net gain of nearly \$173 million.
- ◆ Wage and salary withholding tax collection growth improved from just 0.7 percent in the prior year to 5.1 percent in fiscal year 2015.
- ◆ Estimated income tax payments grew by more than 16 percent and nonresident withholding tax payments jumped by more than 21 percent from the prior year.
- ◆ A greater than 30 percent increase in natural gas production stimulated both income growth and growth in estimated tax and non-resident withholding tax payments.
- ◆ The Personal Income Tax accounted for roughly 43.8 percent of total General Revenue Fund collections for the year.

#### **Consumer Sales & Use Tax**

- ◆ Fiscal Year 2015 Consumer Sales Tax collections totaled nearly \$1.228 billion. Collections rose \$55 million from prior year receipts. Despite the revenue growth, sales tax collections still fell short of estimate for both the month and the year. The Consumer Sales Tax accounted for nearly 29.3 percent of General Revenue Fund collections in Fiscal Year 2015.

#### **Severance Tax**

- ◆ Fiscal year 2015 Severance Tax collections totaled nearly \$414.2 million.
- ◆ General Revenue Fund receipts fell by more than 15 percent from the \$488.7 million collected in the prior fiscal year.
- ◆ Coal production levels were largely unchanged from the prior fiscal year and natural gas production rose by more than 30 percent. However, average coal prices fell by roughly 10 percent and average natural gas prices dropped by roughly 30 percent from the prior year. These factors lead to the decline in tax collections for the year.
- ◆ Monthly Severance Tax collections of \$50.5 million were \$2.4 million below estimate and 38 percent below prior year receipts.
- ◆ Cumulative collections were \$60.4 million below estimate and 9.8 percent below prior year adjusted receipts (adjusted to reflect timing changes for local tax distributions).
- ◆ The Severance Tax accounted for roughly 9.9 percent of total General Revenue Fund collections in Fiscal Year 2015.

#### **Corporation Net Income Tax**

- ◆ Fiscal Year 2015 Corporation Net Income Tax collections for the State General Revenue Fund totaled \$186.1 million, a decrease of \$17.4 million from prior year collections.
- ◆ The decline in revenues was largely attributable to the continuing phase-out of the Business Franchise Tax component. June collections of \$30.1 million were \$10.2 million below estimate and 7 percent below prior year receipts.
- ◆ The Corporation Net Income Tax accounted for roughly 4.4 percent of total General Revenue Fund collections in Fiscal Year 2015.

Additionally, State Road Fund revenues for the fiscal year totaled nearly \$743 million. Collections exceeded both the annual estimate by more than \$41.4 million and prior year collections by nearly \$8.3 million.

## **Tax Reform Committee Addresses Sin Taxes**

In a presentation on the 15th of September committee members were told that West Virginia ranks third in the United States in the percentage of state revenue that comes from so-called "sin taxes". This 11 percent is funded by gambling, alcohol and tobacco. Only Rhode Island and Nevada receive a bigger percentage of their state revenues from sin taxes. Nationally, state sin taxes account for approximately 3.8% of state tax revenues.

On cigarettes we have the 6th lowest tax in the country at 55-cents-a pack. Jared Walczek, a policy analyst for the Washington, D.C. based Tax foundation said that increasing the state's cigarette tax from 55 cents to \$1.50 a pack would increase cigarette tax collections from the current \$100.4 million a year to about \$121 million. He stated that states that have increased cigarette taxes have seen decreases in consumption, increases in smuggling and increases in purchases across state lines to lower-taxed state.

He also stated that because of the relatively low costs, about 20 percent of all cigarettes purchased in West Virginia are re-sold elsewhere. Conversely, in New York City, with the nation's highest cigarette tax, at \$5.85 a pack, estimates are that half of all cigarettes sold there are smuggled.

Jared did state that there is "a strong case to be made against the idea of imposing a new, specific tax on vapor products at all, since, from a public health standpoint, these products –often utilized as a substitute for traditional cigarettes – are widely held to produce less adverse health outcomes, and therefore impose lower societal costs, than cigarettes."

Liz Pardue, tax analyst for the Department of Revenue covered alcohol taxes for the committee. She said that West Virginia's 18-cent-per-gallon excise tax on beer is below the national average of 29 cents. However, the state's \$1-per-gallon excise tax on wine is above the 84-cent national average, and higher than most neighboring states.

West Virginia Alcohol Beverage Control Administration operates as the state's liquor wholesaler, selling liquor to retail outlets at a 28 percent mark-up, producing about \$16 million a year in revenue.

While the tax on beer is relatively low, beer accounted for 69 percent of all alcohol taxes collected in the 2013-14 budget year with liquor accounting for 20 percent and wine at 11 percent. Beer tax collections decreased from about \$7.6 million in 2010 to \$7.4 million in 2014, while sales taxes collected on beer purchases increased from \$23 million to \$24 million during that period, suggesting a sales trend toward higher-priced beer.

Presentations from this meeting can be found at: Alcohol Taxes and Wholesale Markups - [http://www.legis.state.wv.us/legisdocs/2015/committee/interim/TAX/TAX\\_20150915091351.pdf](http://www.legis.state.wv.us/legisdocs/2015/committee/interim/TAX/TAX_20150915091351.pdf) and Tobacco Tax Presentation: [http://www.legis.state.wv.us/legisdocs/2015/committee/interim/TAX/TAX\\_20150916140600.pdf](http://www.legis.state.wv.us/legisdocs/2015/committee/interim/TAX/TAX_20150916140600.pdf).

## **Additional Tax News**

In other presentations to the Committee, the following was revealed:

- West Virginia receives about \$4.7 million a year in tax payments from out-of-state retailers who voluntarily participate in a sales tax agreement among states, but loses an estimate \$103 million a year on online sales to state residents where no sales tax is collected.
- Our consumers sales tax is one of the state's major revenue sources, bringing in more than \$1.3 billion a year.
- We currently have 72 categories of sales tax exemption in state law for various goods and services. Sales tax exemptions for professional services amount to at least \$145 million a year, while exemptions for personal services and other services top \$93 million a year.
- Because of low gas prices this year, it appears that the fuel tax will be adjusted downward next January by about 1 ¾ percent. This is expected to save the average West Virginia driver about \$10 to \$11 over the next year but will cost the state about \$20 million in Highway funding.

## All Politics Are LOCAL - We Need Your help!

It appears that everyday municipalities and counties across West Virginia are getting more and more into the regulation of our businesses. For example:

Charleston City Council introduced Bill No. 7664 on September 8th that amends the Zoning Ordinance adding a conditional use permit in two districts. They are wanting to be able to deal with public nuisance issues.

A proposal to fix Monongalia County's roads by establishing a surcharge on alcohol and tobacco products was discussed during the Monongalia County Commission's meeting on Wednesday, July 22. The sin tax would range from 10 to 25 cents per item, whether it's a six pack of beer, a glass of wine at a restaurant, a pack of cigarettes or a pint of liquor. The proposed additional sin tax is a measure the legislature could consider as either a pilot project for Monongalia County or a statewide project, with counties choosing to be a part of the program.

We need your help. We can't possibly keep track of everything at the city and county level. If you hear of an issue please advise us so that we can get involved.

**Together we can make a difference!**

## State Home Rule Board Approves Six New Cities

The state Home Rule Board has approved applications from six new cities.

Beckley, Grafton, Princeton, Moundsville, Oak Hill and St. Albans have joined nearly two dozen West Virginia cities that have already been granted home-rule status.

The Municipal Home Rule Pilot Program was created in 2007 and began with four cities: Charleston, Huntington, Wheeling and Bridgeport. In October 2014, the Home Rule Board accepted 16 more cities including: Bluefield, Buckhannon, Charles Town, Clarksburg, Dunbar, Fairmont, Martinsburg, Milton, Morgantown, Nitro, Parkersburg, Ranson, Shinnston, South Charleston, Vienna and Weirton.

## Nohe Leaves Senate to Take Position on State Parole Board

Wood County's David Nohe has resigned his seat in the state Senate to become a member of the state Parole Board. There are more than two years left on Nohe's term. His replacement should have political experience, he said. The 3rd Senatorial District executive committee will make recommendations to the governor who will choose Nohe's replacement. Senator Nohe was a huge supporter of our industry and we will miss him.

## Governor Tomblin Appoints Delegate Bob Ashley to Represent 3rd District in WV Senate

Gov. Earl Ray Tomblin has announced the appointment of Delegate Bob Ashley to represent residents of the 3rd District in the West Virginia Senate. Ashley's appointment fills the vacancy created when former Senator David C. Nohe resigned to serve on the West Virginia Parole Board. The governor's appointment is effective immediately. **OMEGA & WVWA wrote a letter to the Governor on Senator Ashley's behalf in support of his appointment.**

## **Coalfield Layoffs Draining State Unemployment Trust Fund**

Having the highest unemployment rate in the nation is beginning to have a negative impact on the state's Unemployment Trust Fund.

West Virginia's seasonally adjusted unemployment rate increased in August rose for the eighth straight month, increasing from 7.5 percent to 7.6 percent. The number of unemployed state residents increased 700 to 59,800.

The national unemployment rate decreased two-tenths of a percentage point to 5.1 percent. West Virginia's not seasonally adjusted unemployment rate decreased one-tenth of a percentage point from 7.6 percent to 7.5 percent.

Most of the current unemployment situation is blamed on layoffs in the coal industry.

The trust fund ended 2010 at \$76 million coming off the recession. West Virginia, unlike many other states, was able to keep its trust fund solvent. Many states had to borrow money during the recession to cover unemployment and that's now being paid back with a special fee.

In 2009, the legislature passed a bill that raised the base wage rate from \$8,000 to \$12,000 a year. It froze the benefit rates and provided a one-time cash infusion, Carenbauer said.

## **Workforce West Virginia Receives \$5.2 Million Grant**

West Virginia is set to receive \$5.2 million in grants to help retrain people who are out of work.

On Thursday, the U.S. Department of Labor announced the grant, which is part of a larger \$138 million effort to reduce unemployment in 27 states. The grant money will be given to Workforce West Virginia to help with its established job training programs.

The federal grant follows recent increases in the state's unemployment rate. In the past five months, the unemployment in West Virginia has increased from 5.9 percent to 7.2 percent, even as the national rate has leveled out around 5.5 percent, according to data from Workforce West Virginia.

U.S. Secretary of Labor Thomas Perez said Wednesday that while the country has rebounded from one of the worst economic collapses in over a century, some people continue to struggle.

"There are still too many people on the sidelines," Perez said.

Perez said the grants, which continue to build upon the efforts of the Workforce Innovation and Opportunity Act, are meant to help around 15,000 people "punch their ticket to the middle class" and "build an economy that works for everyone."

In West Virginia, the grants are meant to help the long-term unemployed and laborers from the state's coal mining industry that have been laid off.

By partnering with existing state and local government job training programs, Perez said the funding will help put people to work at jobs that meet "regional and industry based demand."

In the Mountain State, Workforce West Virginia will partner with companies like Dupont, Toyota and the Shale Net Consortium. The training programs will be focused on manufacturing, healthcare, information technology and the state's oil and gas industries.

"Understanding the needs of the local or regional labor market is key," Perez said.



## **MetroNews West Virginia Poll Finds Solid Support for Right-to-Work Law**

Fewer West Virginians back right-to-work or open-shop laws compared with views nationally, according to new numbers from the MetroNews West Virginia Poll, but there remains widespread support for the concept in the Mountain State.

Some 60 percent of the likely West Virginia voters questioned said they would favor such a law, 23 percent said they would be against such a law and 17 percent were undecided.

The question posed: "As you may or may not know, some states have passed right to work laws that say each worker has a right to hold a job in a company, no matter whether he joins a labor union or not. If you were to vote on such a law, would you vote for it or against it?"

In a national Gallup poll conducted in August 2014, 71 percent said they would support such a law, 22 percent were against it while 7 percent were undecided.

Respondents were asked to say where they aligned on an opinion scale between the following two questions: 1. "Mr. Smith says that no American should be required to join a private organization, like a labor union, against their will." 2. "Mr. Jones says that all workers share in the gains won by the labor union, all workers should have to join and pay dues to give the union financial support."

On the scale, 47 percent said they were much closer to Smith and 22 percent a little closer. For Jones, 14 percent said they were much closer and 11 percent were a little closer. Six percent were not sure.

In all, 61 percent of those questioned had at least heard of right to work or open shop laws, according to the poll numbers released on Monday's MetroNews "Talkline."

More than two dozen other states already have right to work laws. An effort to add West Virginia to that list stalled during the 2015 legislative session.

As proposed, the bill would have prohibited any requirement that a person become or remain a member of a labor organization as a condition of employment; prohibited a requirement that any dues or fees be paid to a labor organization and prohibited any requirement that a person contribute to a charity instead of paying dues or other fees to a labor organization.

The proposal would have allowed for exceptions for federal employers and employees, employers and employees covered by the federal Railway Labor Act, employers and employees on exclusive federal enclaves or where there would be another conflict with, or preempted by, federal law.

The MetroNews West Virginia Poll from Repass Research and Strategic Consulting included a sampling of 402 likely West Virginia voters who were contacted and questioned between Aug. 19 and Aug. 30 via random digital dialing, landline phone, cell phone and opt-in Internet panel.

Created in January 1980, the West Virginia Poll is a non-partisan survey of public opinion. For the first time, MetroNews is partnering with Repass for the poll ahead of the 2016 primary and general elections.

## **Governor Tomblin Announces 11th Consecutive Reduction in Workers' Comp Rates**

On July 21st, Gov. Earl Ray Tomblin announced West Virginia employers will see a projected \$43 million reduction in workers' compensation premiums in the coming year, and have seen a savings of more than \$323 million since the program was privatized in 2006.

The National Council on Compensation Insurance (NCCI) recently filed a proposed reduction in workers' compensation loss cost rates with the Offices of the West Virginia Insurance Commissioner - the 11th reduction in 11 years.

"For years, we have worked hard to create a business climate in West Virginia that encourages companies to innovate and expand," Gov. Tomblin said. "This rate reduction shows our prudent and fiscally responsible policies are helping businesses operating here, and they are benefiting from both lower taxes and lower workers' compensation insurance premiums. This rate reduction reaffirms the steps we are taking to move in the right direction for continued job growth."

NCCI, the state's rating and statistical agent, has proposed an overall decrease of 12.1 percent with the Offices of the West Virginia Insurance Commissioner. The loss cost rate is effective November 1, 2015.

This is the 11th consecutive reduction since privatization and accounts for a cumulative decrease of 63.7 percent from pre-reform levels. Additionally, a proposed 15.3 percent rate decrease for the assigned risk market has also been filed by NCCI.



Contribute  
to the

WVWA  
WHOLE  
PAC

*Your Key to  
the State  
Capitol*

Send your personal check today!



# Federal Update

## IRS Launches ACA Resource Page for Employers

The Internal Revenue Service on Sept. 23 announced a new web page offering information on the Affordable Care Act's employer mandate and reporting requirements. The ACA Information

Center for Applicable Large Employers (ALE) web page provides information and resources for employers of all sizes, including sections to help employers determine if they are an applicable large employer as well as outreach materials. Under the employer mandate of the ACA, ALE's must provide full-time employees with affordable health-care coverage that meets minimum-value standards or face penalties. ALE's also must report their offers of minimum essential coverage to employees. Both provisions are in effect for 2015.

## NLRB General Counsel: Unions Can Now Use Electronic Signatures on Authorization Cards

Unions no longer will need to gather employees' signature on authorization cards before they file a petition with the National Labor Relations Board (NLRB) for a representation election, according to a memorandum issued by NLRB General Counsel Richard Griffin. Memorandum 15-08 states that effective immediately, unions filing petitions will be allowed to submit and the Board will accept, "electronic signatures in support of a showing of interest if the Board's traditional evidentiary standards are satisfied."

As Griffin pointed out, when the NLRB voted to adopt its amended elections rule in December 2014, commonly known as the "ambush election" regulations, the agency made it clear that additional changes to union election procedures were very likely. The Board held at that time that its regulations, as they currently existed, were "sufficient to permit the use of electronic signatures" to form the basis for showing appropriate interest required when a petition for election is filed. The Board gave the General Counsel the responsibility "to determine whether, when and how electronic signatures can be practically accepted" and to "issue guidance on the matter."

According to the memorandum, for an electronic signature to be acceptable and considered, the minimum requirements are as follows:

1. the signer's name;
2. the signer's e-mail address or other known contact information (e.g., social media account);
3. the signer's telephone number;
4. the language to which the signer has agreed (e.g., that the signer wishes to be represented by ABC Union for purposes of collective bargaining or no longer wishes to be represented by ABC Union for purposes of collective bargaining);
5. the date the electronic signature was submitted; and
6. the name of the employer of the employee.

Griffin's memorandum further explains the procedures for submission of a showing of interest based on electronic signatures as follows:

"A party submitting electronic digital signatures must submit a declaration (1) identifying what electronic signature technology was used and explaining how its controls ensure: (i) that the electronic signature is that of the signatory employee, and (ii) that the employee signed the document; and (2) that the electronically transmitted information regarding what and when the employee signed is the same information seen and signed by the employees.

"When the electronic signature technology being used does not support digital signatures that lend itself to verification as described... above, the submitting party must submit evidence that, after the electronic signature was obtained, the submitting party promptly transmitted a communication stating and confirming all information listed [in the above six minimum requirements]."

## **National Labor Relations Board Announces New Standard**

On August 27, 2015, in a 3-2 decision, the National Labor Relations Board (NLRB) announced a new standard for determining joint employer status under the National Labor Relations Act. The Board's decision in *Browning-Ferris Industries, Inc.* significantly expands the Board's joint employer doctrine. Specifically, NLRB will no longer require that an employer directly and immediately exercise control over essential terms and conditions of employment to be deemed a joint employer; instead, the NLRB will evaluate whether an employer has the right to control such terms and conditions.

Under the new standard, more business entities will be subject to obligations and liability under the National Labor Relations Act. And the decision will have a dramatic influence on the way businesses structure their contracts insofar as they include any employment terms for shared or joint workforces. Franchisors, contractors and firms that use workers supplied by other companies should be aware of the new standard and carefully structure (or restructure) their business relationships if they wish to avoid joint employer status.

## **Hazardous Materials: Transportation of Lithium Batteries**

On August 6, 2014 the Pipeline and Hazardous Materials Safety Administration (PHMSA) published final rules (79 F.R. 46012) that set new shipping standards for domestic ground shipments of products with lithium batteries. The rules will impact retailers and wholesalers who transport rechargeable and non-rechargeable batteries, including distribution centers who break down larger shipments of batteries that are subsequently transported to individual retail locations. Generally, the new regulations require that domestic ground shipments of products with lithium batteries adhere to shipping standards which were previously only required for international air and sea transportation. Domestic ground shipments now require additional marking and labeling of packages containing lithium ion (rechargeable) and lithium primary (non-rechargeable) batteries and battery containing products, shipping documents and a Watt-hour marking on all lithium ion batteries.

The final rule was initially set to go into effect on February 6, 2015 however PHMSA agreed to extend the mandatory compliance date from February 6, 2015 until August 7, 2015. This decision was in response to comments that FMI along with RILA, NRF and the Rechargeable Battery Association submitted on January 30, 2015. In anticipation for the August 7 effective date and in response to a number of questions from FMI members we have developed a helpful summary of hazardous material regulations for the transportation by highway and rail of smaller lithium batteries.

## **Bipartisan Initiative Seeks to Avoid ACA Premium Hike for Small, Midsize Companies**

A group of lawmakers from both parties, as well as some employers, insurers and state insurance commissioners, are seeking changes in the Affordable Care Act (ACA) to prevent premium increases that are expected to affect workers at many small and midsize companies next year.

Being targeted is a provision of the ACA that expands the definition of a "small employer" to include companies with 51-100 employees, subjecting them to stringent insurance regulations starting Jan. 1.



## **Have some good news to share?**

Let WVWA know and you could be featured in our next newsletter!

## **Right Decisions Right Now Youth Tobacco Prevention Program Launches Website Enhancements**

Right Decisions Right Now: Be Tobacco Free (RDRN), a free, evidence-based youth tobacco prevention program, has made major enhancements to its website, offering a more user-friendly experience for educators, parents and community groups.

"Any teacher, parent, coach or youth leader can access this successful online program free of charge, and now we've made it both easier to navigate and more intuitive with our redesign of the website," said Steve Curl, a public-policy director involved in efforts to help prevent youth tobacco use on behalf of R.J. Reynolds Tobacco Company, which funds RDRN.

RDRN provides the tools educators need to convey a strong anti-tobacco message to students in grades five through nine. The program also provides valuable information and tools to parents, grandparents and community leaders.

The RDRN program and supplementary educational materials such as videos and posters can be downloaded from the website to computers, smart boards and mobile devices, and are used to teach middle-school students about the risks of using tobacco products. The program is designed to empower students to make good decisions, including the decision not to use any form of tobacco, and to give them the knowledge to live a healthy lifestyle.

More than 20,000 middle schools across the country have used the RDRN program since it was independently developed more than 20 years ago. The program is also used by community groups such as Boy Scouts of America; Big Brothers, Big Sisters; and the Crosby Scholars Program.

The evidence-based program has been tested nationally and found to be successful on two key measures: Smoking levels decreased significantly in test schools, particularly for grades eight and nine; and the program lowered anticipated tobacco use among middle school-aged students. Additionally, students' susceptibility to peer pressure and their perception of the popularity of tobacco-using peers both showed significant declines versus control groups.

Free materials provided through the RDRN program include teacher and parent guides, as well as interactive activities that give students factual information about tobacco prevention that they can reference when completing subsequent lessons. All of the guides are available on the website: [www.rightdecisionsrightnow.com](http://www.rightdecisionsrightnow.com).

## **USDA Issues Order to Stop Sale and Distribution of Four Cigarette Products**

On September the 16th, the U.S. Food and Drug Administration issued orders that will stop the further sale and distribution of four currently marketed R.J. Reynolds Tobacco Company cigarette products – including its Camel Crush Bold brand – because the company's submissions for these products did not meet requirements set forth in the Federal Food, Drug, and Cosmetic Act (FD&C Act). The FDA's evaluation found that Camel Crush Bold, Pall Mall Deep Set Recessed Filter, Pall Mall Deep Set Recessed Filter Menthol and Vantage Tech 13 cigarettes were not substantially equivalent (NSE).

When the FDA issues an NSE order, the tobacco product in inventory, including at a retail location, becomes adulterated and misbranded. As a result, it is illegal to sell or distribute the product in interstate commerce, or sell or distribute the product received from interstate commerce. Doing so may result in the FDA initiating enforcement action, including seizure, without further notice.

Recognizing that retailers may have limited options for disposing of products in their current inventories, the FDA indicated that they do not intend to take enforcement action for 30 days on previously purchased products that a retailer has in its inventory. Importantly, the policy does not apply to inventory purchased by retailers after the date of the order. FDA encourages retailers to contact their supplier or manufacturer to discuss possible options for existing inventories at specific retailer locations.

## Pending Federal Legislation on Tobacco Issues

While local and state tobacco-related legislative issues are reported on routinely throughout the year, bills pending in Congress that would tax or regulate cigarettes, other tobacco products and electronic cigarettes are also numerous, but generally do not receive the same level of media attention.

The tobacco-related bills summarized below are pending in either the U.S. Senate or the U.S. House of Representatives and have been referred to congressional committees for future committee hearings and actions:

- Senate Bills 430 and 2047 and House Bills 478 and 4325 would regulate the marketing of e-cigarettes.
- Senate Bill 142 and House Bills 1375 and 3242 would require child safety packaging for liquid nicotine containers to be established by the Consumer Product Safety Commission.
- The President's proposed federal budget includes a 94-cents-per-pack increase in the federal cigarette tax and proportionate tax increases for all other tobacco products.
- House Bill 1578 would temporarily increase the federal tax on tobacco products to fund the enrollment of individuals under the pre-existing condition insurance program under the Affordable Health Care law.
- Senate Bills 39, 194, and 826 would enact tobacco tax parity so that tobacco products are taxed at essentially the same rate as the federal cigarette tax rate.
- House Bill 3042 would amend the Jenkins Act to prevent the interstate sale and delivery of e-cigarettes, cigars and pipe tobacco to minors.
- House Bill 662 would amend the Federal Food, Drug and Cosmetic Act to exempt traditional large and premium cigars from regulation by the Food and Drug Administration and from user fees assessed on tobacco products by the FDA.

## FDA Considers E-Liquid Regulations

The U.S. Food and Drug Administration (FDA) is looking to expand upon the e-vapor rules included in its initial set of proposed deeming regulations announced in April 2014. According to an Associated Press report, the regulations could include nicotine exposure warnings and child-resistant packaging requirements.

An online posting said the FDA is considering whether "it would be appropriate for the protection of the public health to warn the public about the dangers or nicotine exposure" and "require that some tobacco products be sold in child-resistant packaging," a response to an uptick in liquid nicotine poisonings reported by emergency rooms and poison centers.

Though e-liquids used in electronic cigarettes and vaporizers would be included in these potential regulations, the FDA also expressed concerns over lesser-known tobacco products like dissolvable nicotine strips, lotions, gels and beverages.

The FDA will take comments from the public for 60 days on more than two dozen questions surrounding the potential nicotine regulations. Those questions include what kind of language should be used on nicotine exposure warnings, whether graphic warning labels should be used and whether child-resistant packaging should be required for products besides liquid nicotine.

An online Reuters/Ipsos poll of 5,679 Americans suggests electronic-cigarette usage is significantly higher than government estimates. The survey, conducted between May 19 and June 4, 2015, shows nearly 10% of adults now vape.



## **Tobacco Firms Get Breathing Room**

The tobacco industry is breathing easier after the end of a federal assessment that forced cigarette manufacturers, cigar companies and chew makers to make 10 years of payments to farmers, averaging nearly \$1 billion annually.

The expiration of the Tobacco Transition Payment Program has bolstered the bottom line of Big Tobacco after years of tax increases and declines in smoking.

The annual savings equal about 2.4% of the U.S. tobacco industry's annual revenue - or about 9.9% of its profit - based on industry figures provided by research firm IBISWorld.

For 10 years, the government forced tobacco manufacturers such as Altria Group, Reynolds American and Lorillard to make quarterly payments totaling about \$9.6 billion to help farmers cope with the sudden deregulation of tobacco farming in 2005.

The U.S. Department of Agriculture passed those payments along to tobacco growers to help them deal with the resulting drop in the crop's price.

## **Nielsen Tobacco Roundup: August**

Largely positive tobacco trends continued through August according to the latest Nielsen data. For the four weeks ending Sept. 5, 2015, Nielsen reports cigarette and smokeless sales grew in the combined xAOC channels (food, drug, mass & WMT scanner data) and convenience stores. The trends were not so positive in the electronic-cigarette segment, where dollar sales declined and unit sales growth decelerated.

### **Cigarette Sales Burn Up**

Cigarette dollar sales increased 3.4% this month (up from 3.1% last month and this time last year, when sales decreased 1.5%), driven by a 3.8% pricing increase and a 0.4% decrease in unit sales. Year to date, cigarette units are down just 0.6%, a vast improvement from the 10-year average of 3-4% declines.

"Given these favorable trends, we remain constructive on U.S. volumes for 3Q15 and the full-year, benefiting each of Altria, Reynolds and Imperial," Cowen and Co. analyst Vivien Azer wrote in a research note.

In terms of the major manufacturers, Reynolds' cigarette dollar sales were up 4.9% year-over-year, Altria's sales were up 2.7% and Imperial's sales were down 0.9% (versus a 1.5% decline last month and a 7.4% decline last year). Additionally, Reynolds managed to grow its newly acquired Newport brand (approximately 37% of the company's cigarette sales) by 6.2%.

### **Smokeless Stays Solid**

Smokeless dollar sales grew 5% in August, due to strong performances from leading brands. Reynolds' Grizzly was up 6.3% and Altria's Copenhagen was up 7.3%. Altria retained its leading dollar share position, a 57.1% share, followed by Reynolds (a 34% share) and Swedish Match (a 6.8% share).

### **E-Cigs' Pricing Problem**

E-cigarette dollar sales fell 7.6% year-over-year (versus a 12-week trend of 3.2% declines), with average unit pricing down 15.9%. Unit sales were up by just 9.9%, a deceleration from the 18.2% 12-week growth trends.

"Year-over-year growth continued to be fueled by the national launches of Vuse and MarkTen," Azer said. "Dollar sales and volumes fell 24.0% and 18.3%, respectively, excluding the two brands."

As for the leading performers, Reynolds' Vuse remained the No. 1 player in both dollar and unit sales, but lost dollar share sequentially (down 0.2% to 33.3% of category dollar sales). Meanwhile, the second and third best-selling brands made sequential gains: Imperial's blu gained 0.2 points in dollar share (to 23.7%), and 0.6 points in units (to 17.8%); and Japan Tobacco's Logic was up 0.8 points in dollar share (to 15.3%) and 0.6% points in units (to 9.3%).

# Other State News

## More States Enact Higher Tobacco Taxes

*Seven states have raised cigarette, OTP or e-vapor tax rates*

In 2014, only one state, Vermont, raised cigarette or tobacco product tax rates. However, in 2015, there has been an increase in the number of states that have passed into law not only higher cigarette and tobacco taxes, but new taxes on e-cigarettes and liquid nicotine. Following are the raises:

- ◆ Connecticut enacted a cigarette tax increase of 25 cents per pack for two years with the first 25 cents per pack increase going into effect on October 1, 2015, and the second 25 cents per pack increase taking effect on July 1, 2016. The new cigarette tax rate as of October 1, 2015, will be \$3.65 per pack and the tax as of July 1, 2016, will be \$3.90 per pack.
- ◆ In Kansas, a 50 cents per pack cigarette tax increase takes effect today, July 1, 2015. The new cigarette tax rate as of July 1 is \$1.29 per pack.
- ◆ The Louisiana a 50 cents per pack cigarette tax increase, which goes into effect July 1, 2015. The new cigarette tax rate is 86 cents per pack. Also, a new tax of 5 cents per milliliter of liquid nicotine was also enacted for e-cigarettes and e-vapor products.
- ◆ In Nevada, a \$1.00 per pack cigarette tax increase effective July 1, 2015. The new cigarette tax rate is \$1.80 per pack.
- ◆ Ohio added a 35 cents per pack cigarette tax increase effective July 1, 2015. The new cigarette tax rate is \$1.60 per pack.
- ◆ In Rhode Island, a 25 cents per pack cigarette tax increase was enacted and becomes effective on August 1, 2015. The new cigarette tax rate on August 1 will be \$3.75 per pack.
- ◆ Vermont raised the state's cigarette tax by 33 cents per pack for a new tax rate of \$3.08 per pack effective July 1.
- ◆ The Massachusetts Senate is pressing to increase the tax on flavored cigars, flavored smoking tobacco and flavored "blunt wraps" from 40% to 210% in an attempt to reduce use of the products by young adults. Unflavored and tobacco-flavored cigars would remain taxed at 40%. If the tax hike becomes law, Massachusetts would have the highest flavored-cigar tax in the country. The tax would be imposed directly on cigar distributors. So, for instance, a retailer buying a \$1 flavored cigar would pay a \$2.10 tax, significantly but opaquely raising the price for consumers.

## Hawaii Raises Smoking Age to 21

Hawaii Governor David Ige signed a bill making Hawaii the first state in the country to ban smoking for anyone under 21, beginning next year. The measure bans the sale or use of traditional tobacco cigarettes as well as electronic cigarettes for anyone under age 21. There will be no grandfather clause, so an 18-year-old who can smoke legally now will not be able to do so legally as of January 1, when the law takes effect.

A proposal to raise the smoking age to 21 is currently working its way through the California legislature as well, and four other states have already raised the legal smoking age to 19: Alabama, Alaska, New Jersey and Utah.

## Minneapolis Bans Flavored Cigars from C-Stores

The Minneapolis City Council voted to ban the sale of flavored tobacco products at convenience stores. Council members in favor of the ban describe it as "a major policy change" and expect it to have a significant effect on young people, as a means to curb youth smoking.

According to news reports, flavored cigars can currently be sold at more than 300 locations, but when the law goes into effect in January that number drops to fewer than two dozen adult-only tobacco shops. The measure also set minimum prices for both flavored and unflavored cigars at \$2.60.

## Washington, DC Vapor Tax Goes Into Effect on October 1st

Effective October 1, 2015, the tax rate on other tobacco products sold in the District of Columbia will decrease from 70% to 67% of the wholesale price and the 67% tax rate will also apply to vapor products. The term "vapor product" means any "non-lighting, noncombustible product that employs a mechanical heating element, battery, or electronic circuit, regardless of the shape or size, that can be used to produce aerosol from nicotine in a solution or any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device."

The 67% excise tax will be imposed on the wholesale price of disposable e-cigarettes, plus nicotine cartridges, tanks, batteries, atomizers, cartomizers, and mouthpieces. Accessories that are not a part of the device itself such as a battery charger will not be subject to the 67% excise tax.

## Miscellaneous

### FTA Uniformity Initiative

CDA, working with their Task Force, has created a series of videos designed to walk members through the Federation of Tax Administrator's (FTA) electronic uniform reporting initiative in a step-by-step, in-depth manner.

We are urging our members to review these important video tutorials and pass them along to your employees who deal directly with these tax reporting forms. We would appreciate your input once you have had a chance to view these tutorials.

FTA has indicated they are willing to consider concerns of industry but time is running out as the FTA moves to adopt these uniformity forms.

You can view the CDA's videos at <http://www.taxadmin.org/fta/tobacco/uniformity.html>.

## Member News

### Tri-State Features Sessions on FDA Regulation, Taxation, Individual State Meetings

The Tri-State Convention, Aug, 12-14 in Lexington, KY, featured a sessions on FDA regulation, taxation, dealing with multi-cultural retailers, individual state association meetings and a host of great social and networking events.

The gathering featured meetings of the Kentucky Tobacco & Candy Association, Ohio Wholesale Marketers Association and the Indiana Wholesale Distributors Association. These groups have been holding their annual meetings together under the umbrella of the Tri-State Convention for 18 years.

A highlight of the meeting was the presentation of the Garry Adams Memorial Award to Steve Kottak from Reynolds.



# save date

# THE



*Where Wholesalers and  
Manufacturers Come  
Together*

---

---

**2016 Mid-Atlantic  
Legislative Conference**  
**The Greenbrier Resort**

06.01.16

06.03.16

### ***Why should you attend the Mid-Atlantic Legislative Conference?***

Rob Sincavich of Team Sledd says about this event: "The Mid-Atlantic Legislative Conference consistently provides the highest level of important information on products that are the lifeblood of the wholesaler. It's tailored to the wholesale community uniquely and is instrumental for decision making with products and allied manufacturers as we move forward into uncharted regulatory waters."

### ***What do attendees say about this conference?***

Dave Riser with R. J. Reynolds Tobacco Company says about this event: "If you are interested in understanding the legislative and regulatory landscape – what you need to know and what issues affect your business – then every wholesaler should attend the Mid-Atlantic Legislative Conference".

**West Virginia Wholesalers  
Association**



2006 Kanawha Blvd., East  
Charleston, WV 25311  
[www.wvwholesalers.org](http://www.wvwholesalers.org)

Phone: 304.205.5496

FAX: 304.343.5810