

U.S. Attorney's Report to the District

Excise Tax Evasion Prosecutions

Early this month, following a seven-day trial in U.S. District Court in Sacramento, a jury convicted Moo Hoon Kim, 54, of Cypress, California, of mail fraud in a case prosecuted by Assistant U.S. Attorney Michael Anderson and attorneys from the U.S. Department of Justice's Antitrust Division. The evidence at trial showed that Kim, a wholesaler and distributor of tobacco products, had used front companies to disguise purchases and sales, evading at least \$16 million in California excise taxes. Kim will be sentenced in June. The conviction is the latest accomplishment in a long-running federal-state effort to address the problem of rampant tax evasion in the tobacco products industry.

In California, non-cigarette tobacco products, referred to as other tobacco products or OTP, including cigars, snuff, chewing tobacco and leaf tobacco, are subject to a nearly 30% excise tax. Much of the proceeds of this tax are used to fund California's early childhood development program, First 5 California. Cigarettes are taxed through an encrypted stamp program, making excise tax evasion relatively difficult, but OTP are not taxed through a stamp program. Wholesalers and distributors of OTP often evade excise taxes by receiving shipments of product in nearby states and importing it into California, by under-reporting sales, and by using front companies and false invoicing to disguise the importation and sale of OTP in the state. OTP excise tax evasion costs the state between \$85 and \$95 million a year in revenue, according to the Board of Equalization.

To address this problem, a few years ago this office undertook a joint enforcement effort involving federal investigators with the Bureau of Alcohol, Tobacco, Firearms and Explosives, state investigators with the California Board of Equalization, and state prosecutors with the California Attorney General's Office. By bringing federal prosecutions against some of the most egregious tax evaders in the OTP industry, our intent was to reduce and deter excise tax evasion. The effort was initially spearheaded by former Assistant U.S. Attorney Steve Lapham.

The results of the joint effort have been impressive. To date, this office has secured felony convictions against 25 people in the OTP industry. Many of those offenders have been sentenced to significant prison time. In those cases, restitution to the state of California of over \$32.4 million has been ordered. In civil forfeiture cases filed as part of the joint effort, we have already collected over \$17 million, and additional forfeiture proceedings are ongoing. One forfeiture order, resulting from a settlement last year with a New Jersey OTP distributor, was for over \$13 million.

In addition to helping recoup some of the losses caused by tax evaders, the Board of Equalization reports that these prosecutions are having an impact in reducing OTP excise tax evasion. In some instances, reports of OTP sales in California jumped after news of convictions obtained by this office. Our federal-state partnership has been effective, and it will continue.

If you would like to communicate with our office, contact the main number in Sacramento, or submit a suggestion by clicking on the button below. Thank you.

United States Attorney

Benjamin B. Wagner