

SMOKELESS TOBACCO MASTER SETTLEMENT AGREEMENT

**323.810 Definitions for ORS 323.810 to 323.816.** As used in ORS 323.810 to 323.816:

(1) “Adjusted for inflation” means increased in accordance with the formula for inflation adjustment set forth in Exhibit F to the Smokeless Tobacco Master Settlement Agreement.

(2) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with another person. For purposes of defining “affiliate”:

(a) “Owns,” “is owned” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more; and

(b) “Person” means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) “Qualified escrow fund” means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1 billion, where such arrangement requires that such financial institution hold the escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product manufacturer who is placing the funds into escrow from using, accessing or directing the use of the escrowed funds’ principal except as consistent with ORS 323.816 (2)(b).

(4) “Released claims” has the meaning given that term in section II(gg) of the Smokeless Tobacco Master Settlement Agreement.

(5) “Releasing parties” has the meaning given that term in section II(ii) of the Smokeless Tobacco Master Settlement Agreement.

(6) “Smokeless Tobacco Master Settlement Agreement” means the settlement agreement (and related documents) entered into on November 23, 1998, by the State of Oregon and leading United States tobacco product manufacturers.

(7) “Smokeless tobacco products” means moist snuff, as defined in ORS 323.500, or chewing tobacco, as defined in section 5702 of the Internal Revenue Code.

(8)(a) “Tobacco product manufacturer” means an entity that, after September 28, 2009, directly (and not exclusively through any affiliate):

(A) Manufactures smokeless tobacco products anywhere that such manufacturer intends to be sold in the United States, including smokeless tobacco products intended to be sold in the United States through an importer (except where such importer is an Original Participating Manufacturer, as defined in section II(cc) of the Smokeless Tobacco Master Settlement Agreement), that will be responsible for the payments under the Smokeless Tobacco Master Settlement Agreement with respect to such smokeless tobacco products as a result of the provisions of section VI(b) of the Smokeless Tobacco Master Settlement Agreement and that pays the taxes specified in section II(w) of the Smokeless Tobacco Master Settlement Agreement, and provided that the manufacturer of such smokeless tobacco products does not market or advertise such smokeless tobacco products in the United States);

(B) Is the first purchaser anywhere for resale in the United States of smokeless tobacco products manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(C) Becomes a successor of an entity described in subparagraph (A) or (B) of this paragraph.

(b) “Tobacco product manufacturer” does not include an affiliate of a tobacco product manufacturer unless such affiliate is itself a tobacco product manufacturer under paragraph (a) of this subsection.

(9) “Units sold” means the number of individual containers of smokeless tobacco products sold in the State of Oregon by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State of Oregon. The Department of Revenue shall adopt such rules as are necessary to ascertain the amount of state excise tax paid on the smokeless tobacco products of such tobacco product manufacturer for each year. A unit container shall contain 3.2 ounces of moist snuff, as defined in ORS 323.500, or 3.0 ounces of chewing tobacco. [2009 c.717 §18]

**323.813 Findings and purpose.** (1) The use of smokeless tobacco products presents serious public health concerns to the State of Oregon and to the residents of the State of Oregon. The United States Surgeon General has determined that use of smokeless tobacco causes cancer, noncancerous oral conditions and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins using tobacco products.

(2) Use of smokeless tobacco products also presents serious financial concerns for this state. Under certain health care programs, the State of Oregon may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with the use of smokeless tobacco, and those persons may have a legal entitlement to receive such medical assistance.

(3) Under those health care programs, the State of Oregon pays millions of dollars each year to provide medical assistance for persons for health conditions associated with the use of smokeless tobacco products.

(4) It is the policy of the State of Oregon that financial burdens imposed on this state by the use of smokeless tobacco be borne by tobacco product manufacturers rather than by this state to the extent that such manufacturers either determine to enter into a settlement with the State of Oregon or are found culpable by the courts.

(5) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, titled the “Smokeless Tobacco Master Settlement Agreement,” with the State of Oregon. The Smokeless Tobacco Master Settlement Agreement obligates those manufacturers, in return for a release of past, present and certain future claims against them as described in the Smokeless Tobacco Master Settlement Agreement:

- (a) To pay substantial sums to the State of Oregon (tied in part to their volume of sales);
- (b) To fund a national foundation devoted to the interests of public health; and
- (c) To make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(6) It would be contrary to the policy of the State of Oregon if those tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that this state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State of Oregon to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent

such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise. [2009 c.717 §19]

**323.816 Required actions by manufacturer.** (1) Any tobacco product manufacturer selling smokeless tobacco products to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after September 28, 2009, shall do one of the following:

(a) Comply with the requirements imposed on Participating Manufacturers that are set forth in sections III, V and VII of the Smokeless Tobacco Master Settlement Agreement; or

(b) Place into a qualified escrow fund, by April 15 of the year following the year in question, the amount of \$0.40 per unit sold for 2010 or such amount adjusted for inflation for each year thereafter.

(2) A tobacco product manufacturer that places funds into escrow pursuant to this section shall receive the interest or other appreciation on such funds as earned. The funds themselves shall be released from escrow only under the following circumstances:

(a) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State of Oregon or any releasing party located or residing in this state. Funds shall be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(b) To refund any excess amount owed to a tobacco product manufacturer when the tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in Oregon in a particular year was greater than the Smokeless Tobacco Master Settlement Agreement payments, as determined pursuant to section IX(c) of that agreement after final determination of all adjustments, that the manufacturer would have been required to make on account of such units sold had it been a Participating Manufacturer, as defined in section II(ee) of the Smokeless Tobacco Master Settlement Agreement; or

(c) To refund funds to a tobacco product manufacturer 25 years after the date on which they were placed in escrow, only if the funds were not released from escrow under paragraph (a) or (b) of this subsection.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this section shall annually certify to the Attorney General that it is in compliance with this section. The Attorney General may bring a civil action on behalf of the State of Oregon against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(a) Be required within 15 days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a finding of a violation of this section, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(b) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a

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finding of a knowing violation of this section, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(c) In the case of a second knowing violation, be prohibited from selling smokeless tobacco products to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) for a period not to exceed two years. Each failure to make an annual deposit required under this section shall constitute a separate violation. [2009 c.717 §20]