

TOBACCO PRODUCT MANUFACTURERS' ESCROW ACCOUNTS (EXCERPT)
Act 244 of 1999

***** 445.2051.amended THIS AMENDED SECTION IS EFFECTIVE JUNE 13, 2016 *****

445.2051.amended Definitions.

Sec. 1. As used in this act:

(a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the master settlement agreement.

(b) "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. Solely for purposes of this definition, the terms "owns", "is owned", and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10% or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(c) "Allocable share" means that term as defined in the master settlement agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette", 0.09 ounces of "roll-your-own" tobacco shall constitute 1 individual "cigarette".

(e) "Inflation adjustment" means that term as defined in the master settlement agreement.

(f) "Master settlement agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, and incorporated into a consent decree and final judgment entered into on December 7, 1998, in Kelley Ex Rel. Michigan v Philip Morris Incorporated, et al., Ingham County circuit court, docket no. 96-84281CZ.

(g) "Original participating manufacturer" means that term as defined in the master settlement agreement.

(h) "Participating manufacturer" means that term as defined in the master settlement agreement.

(i) "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 \$1,000,000,000.00 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 placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with section 2(2) of this act.

(j) "Released claims" means that term as defined in the master settlement agreement.

(k) "Releasing parties" means that term as defined in the master settlement agreement.

(l) "Tobacco product manufacturer" means an entity that after the date of enactment of this act directly (and not exclusively through any affiliate) meets 1 or more of the following:

(i) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States).

(ii) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

(iii) Becomes a successor of an entity described in subparagraph (i) or (ii).

(m) The term "tobacco product manufacturer" as defined in subdivision (l) does not include an affiliate of a tobacco product manufacturer unless the affiliate itself falls within 1 or more of subdivision (l)(i) to (iii).

(n) "Units sold" means the number of individual cigarettes sold in the state 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 on packs (or

"roll-your-own" tobacco containers) bearing the excise tax stamp of the state. Units sold shall also include the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as to which the state had power to under federal law, but did not, impose or collect an excise tax. The department of treasury may promulgate such rules as are necessary to ascertain the amount of units sold of such tobacco product manufacturer for each year.

History: 1999, Act 244, Imd. Eff. Dec. 28, 1999;—Am. 2016, Act 42, Eff. June 13, 2016.