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CHAPTER 47.

TOBACCO ESCROW FUND ACT

SECTION 11-47-10. Short title.

This chapter may be cited as the "Tobacco Escrow Fund Act".

HISTORY: 1999 Act No. 47, Section 2.

SECTION 11-47-20. Definitions.

As used in this chapter:

(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 ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organizations or group of persons.

(c) "Allocable share" means allocable share as that term is 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:

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(2) 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

(3) 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 subitem (1) of this definition.

The term "cigarette" includes "roll-your-own" (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 one individual "cigarette".

(e) "Master Settlement Agreement" means the settlement agreement and related documents entered into on November 23, 1998, by the State and leading United States tobacco product manufacturers.

(f) "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 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, assessing, or directing the use of the funds' principal except as consistent with Section 11-47-30(b)(2) of this chapter.

(g) "Released claims" means released claims as that term is defined in the Master Settlement Agreement.

(h) "Releasing parties" means releasing parties as that term is defined in the Master Settlement Agreement.

(i) "Tobacco product manufacturer" means an entity that after the date of enactment of this act (and not exclusively through any affiliate):

(1) 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 (as that term is defined in the Master Settlement

Agreement) 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);

(2) 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; or

(3) becomes a successor of an entity described in subitem (1) or (2).

The term "tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of subitems (1)--(3) above.

(j) "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). The Department of Revenue shall ascertain the amount of state excise tax paid pursuant to Article 5, Chapter 21, Title 12 on the cigarettes of such tobacco product manufacturer for each year, and may promulgate regulations necessary for that determination.

HISTORY: 1999 Act No. 47, Section 2.

SECTION 11-47-30. Tobacco product manufacturers required to participate in Master Settlement Agreement or deposit funds in qualified escrow fund.

Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after the date of enactment of this act shall do one of the following:

(a) become a participating manufacturer, (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b)(1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)--

1999: \$.0094241 per unit sold after the date of enactment of this act;

2000: \$.0104712 per unit sold;

for each of 2001 and 2002: \$.0136125 per unit sold;

for each of 2003 through 2006: \$.0167539 per unit sold;

for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to subitem (1) shall receive the interest or other appreciation on such funds as earned. Such 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 or any releasing party located or residing in the State. Funds shall be released from escrow under this subsubitem (i) in the order in which they were placed in escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in this State in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to Section IX(i) of that agreement including after final determination of all adjustments that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess must be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subsubitems (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this item shall annually certify to the Attorney General that it is in compliance with this item. The Attorney General may bring a civil action on behalf of the State 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 it into compliance with this section. The court, upon a finding of a violation of this item, may impose a civil penalty to be paid to the general fund of the 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 it into compliance with this section. The court, upon a finding of a knowing violation of this item, may impose a civil penalty to be paid to the general fund of the State in an amount not to exceed 15 percent of the amount improperly withheld from escrow for each day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow;

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State, (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed 2 years; and

(D) be required to pay the reasonable costs and attorney's fees incurred by the State in its successful enforcement of this chapter.

(4) Each failure to make an annual deposit required under this item shall constitute a separate violation.

HISTORY: 1999 Act No. 47, Section 2; 2005 Act No. 61, Section 1.B.

SECTION 11-47-40. Stay of execution upon filing of notice of appeal.

(A) The appeal of a judgment awarding relief in a civil action, under any legal theory, involving a signatory of the Master Settlement Agreement, as defined in Section 11-47-20(e), or a successor to or affiliate of a signatory to the agreement, automatically stays the execution of that judgment.

(B) The stay described in subsection (A) is effective upon the filing of the notice of appeal and during the entire course of appellate review of the judgment.

HISTORY: 2004 Act No. 216, Section 1.