

**TOBACCO MASTER SETTLEMENT AGREEMENT
PAYMENTS BY NONPARTICIPATING TOBACCO PRODUCT MANUFACTURERS
2000-1**

Pursuant to the authority vested in the Director of the Department of Finance and Administration (DFA) and the Commissioner of Revenue by Ark. Code Ann. §26-18-301, §26-57-206 and §26-57-260(a)(10)(B) and in compliance therewith, the Director of DFA and the Commissioner of Revenue hereby promulgate the following regulation for the enforcement and administration of Act 1165 of 1999.

1. **EFFECTIVE DATE.** This regulation shall be effective as of the date of its execution.
2. **PURPOSE.** This regulation is promulgated to implement and clarify the process by which tobacco product manufacturers who do not participate in the Master Settlement Agreement must calculate and deposit an annual payment into an escrow account for the State of Arkansas. Act 1165 of 1999 was enacted to ensure that manufacturers whose cigarettes are sold in Arkansas, but who have not entered into the Master Settlement Agreement, are financially capable of fulfilling their economic obligations, if any, to Arkansas and its citizens arising from smoking related illnesses.
3. **DEFINITIONS.**
 - (A) “Cigarette” shall mean any tobacco product as defined in §26-57-260(a)(4), including cigarillos (little cigars in brown paper sold in packs of ten or twenty). The term “cigarette” does not include cigars, chewing tobacco, snuff, or tobacco manufactured and marketed exclusively for use in pipes.
 - (B) “Master Settlement Agreement” shall mean the agreement entered into on November 23, 1998 between forty-six (46) states (including Arkansas) and several major cigarette manufacturers. The Master Settlement Agreement (“MSA”) settles the various lawsuits filed by the states against the major cigarette manufacturers. Arkansas’ lawsuit was filed with the Pulaski County Chancery Court, Sixth Division, case number IJ97-2982. The MSA contains both economic and non-economic provisions. Under the non-economic terms, the cigarette manufacturers agree to various restrictions on their advertising and marketing practices as well as certain other aspects of their corporate behavior. Under the economic terms, the cigarette manufacturers agree to pay the states over two hundred billion dollars (\$200,000,000,000) between 1998 and 2025. The State of Arkansas’ share will be approximately one billion seven hundred million dollars (\$1,700,000,000).
 - (C) “Nonparticipating Manufacturer” shall mean any tobacco product manufacturer as defined in §26-57-260(a)(9) who is not included in nor bound by the Master Settlement Agreement. If cigarettes manufactured by a manufacturer in a foreign country are sold in Arkansas and the manufacturer

did not intend for its cigarettes to be sold in the United States, responsibility for making the escrow payment will fall upon the first importer of such cigarettes into the United States.

- (D) “Participating Manufacturer” shall mean any tobacco product manufacturer as defined in §26-57-260(a)(9) who is included in and bound by the Master Settlement Agreement.
- (E) “Units Sold” shall mean all cigarettes and roll-you-own tobacco:
 - (1) Required by Arkansas law to have an Arkansas tobacco excise tax stamp affixed to the package containing such cigarettes or tobacco; and
 - (2) Sold by a manufacturer or wholesaler for retail sale within Arkansas, either directly to consumers in Arkansas or through tobacco product retail businesses located within Arkansas and licensed by the Arkansas Tobacco Control Board.

4. GENERAL INFORMATION

- (A) A nonparticipating manufacturer whose cigarettes or “roll-you-own” tobacco are sold to consumers within Arkansas after April 6, 1999, must either:
 - (1) Become a participating manufacturer and perform its financial obligations as required under the Master Settlement Agreement; or
 - (2) Deposit into a qualified escrow fund as defined in Ark. Code Ann. §26-57-260(a)(6) on or before April 15 of the year following the year for which the deposit is being made the following amounts:
 - (a) 1999---.94241 cents for each unit sold after April 6, 1999;
 - (b) 2000 ---1.04712 cents for each unit sold;
 - (c) 2001 and 2002 --- 1.36125 cents for each unit sold;
 - (d) 2003 through 2006 ---1.67539 cents for each unit sold;
 - (e) 2007 and each year thereafter --- 1.88482 cents for each unit sold.
- (B) Beginning March 15, 2000, and on or before March 15 of each subsequent year, DFA will provide each ascertainable nonparticipating manufacturer and the Attorney General with the units sold in Arkansas during the preceding calendar year. DFA will obtain this information from the monthly tobacco excise tax reports filed with DFA by tobacco distributors, information obtained during audits of tobacco distributors and other sources which reflect the units sold in this state. This figure should be used by the nonparticipating manufacturer in calculating the proper amount of its

escrow payment to Arkansas. Any nonparticipating manufacturer that disagrees with the units sold as determined by DFA should notify both DFA and the Attorney General of that disagreement by April 1 of that year. Notice to DFA and the Attorney General should be sent to the address shown in subsection 4(g) of this regulation.

- (C) Nonparticipating manufacturers are ultimately responsible for the calculation of their escrow payments due to the State of Arkansas. The calculation should be performed as follows:

UNITS SOLD	X	APPLICABLE ESCROW	=	TOTAL ESCROW PAYMENT
(as defined in		PAYMENT RATE		DUE ON OR BEFORE APRIL 15
subsequent 3(E)		(as set forth in		OF EACH YEAR FOR THE
above)		subsection 4(A)(2)		PRECEDING CALENDAR YEAR
		above)		YEAR

- (D) The Arkansas Department of Finance and Administration is authorized to adjust the amount of a nonparticipating manufacturer’s total escrow payment liability based upon information acquired through subsequent audits conducted by the Department of tobacco distributors who sell the nonparticipating manufacturers products within Arkansas. The affected nonparticipating manufacturer and the Attorney General will be notified of any such adjustment from the Department. Adjustments may be challenged administratively through the Department’s administrative hearing and review process in accordance with the Arkansas Tax Procedure Act (Ark. Code Ann §26-18-101 et seq.)

- (E) Each nonparticipating manufacturer required to deposit funds into a qualified escrow fund must file with the Office of the Attorney General a written document on or before April 30 of each year verifying:

- (1) the number of individual cigarettes, including “roll-you-own” tobacco, sold in Arkansas during the prior year; and
- (2) that the appropriate amount of money has been deposited into the escrow fund. Verification of the deposit must be documented by a statement from the financial institution with whom the escrow account has been established.

Written verification should be sent to: State of Arkansas, Office of the Attorney General, Civil Division, 323 Center Street, Suite 1100, Little Rock, AR 72201.

- (F) Cigarette manufactures, wholesalers, distributors and retailers doing business in Arkansas shall cooperate with Arkansas Department of Finance and Administration and the Arkansas Office of the Attorney General in providing information required for the proper enforcement of Act 1165 of

1999. If deemed necessary, such manufacturers, wholesalers, distributors and retailers may be audited as authorized under Ark. Code Ann. §26-18-305 and §26-57-212.

(G) Questions or requests for additional information should be directed to:

Office of the Attorney General

Civil Division

323 Center Street, Suite 1100

Little Rock, AR 72201

Telephone: (501) 682-2007

Fax: (501) 682-2591

Department of Finance and
Administration

Revenue Division

Miscellaneous Tax Section

P. O. Box 8054, Room 230

Little Rock, AR 72203-8054

Telephone: (501) 682-7187

Fax: (501) 682-7900

Issued this 20th day of January, 2000 in the City of Little Rock, Pulaski County, Arkansas.

Dick Barclay, Director
Department of Finance
and Administration

Tim Leathers, Deputy Director and
Commissioner of Revenue
Department of Finance and Administration