

Title 26. Taxation

Chapter I. Generally, Department of Finance and Administration

Subchapter F. Miscellaneous Taxes

Part 163. Payments by Nonparticipating Tobacco Product Manufacturers

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"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 rule for the enforcement and administration of Act 1165 of 1999.

1.EFFECTIVE DATE. This rule shall be effective as of the date of its execution."

"Issued this 1st day of January, 2000 in the City of Little Rock, Pulaski County, Arkansas."

Subpart 1. Generally

26 CAR § 163-101. Purpose.

(a) This part is promulgated to implement and clarify the process by which tobacco product manufacturers that do not participate in the Master Settlement Agreement must calculate and deposit an annual payment into an escrow account for the State of Arkansas.

(b) Acts 1999, No. 1165, was enacted to ensure that manufacturers whose cigarettes are sold in Arkansas, but that 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.

Authority. Arkansas Code § 26-57-206.

26 CAR § 163-102. Definitions.

As used in this part:

(1)(A) "Cigarette" means any tobacco product as defined in Arkansas Code § 26-57-260(4), including cigarillos (little cigars in brown paper sold in packs of ten (10) or twenty (20)).

(B) The term "cigarette" does not include:

- (i) Cigars;
- (ii) Chewing tobacco;
- (iii) Snuff; or
- (iv) Tobacco manufactured and marketed exclusively for use in pipes;

(2)(A) "Master Settlement Agreement" means the settlement agreement entered into on November 23, 1998, between forty-six (46) states (including Arkansas) and several major cigarette manufacturers.

(B) The Master Settlement Agreement (MSA) settles the various lawsuits filed by the states against the major cigarette manufacturers.

(C) Arkansas's lawsuit was filed with the Pulaski County Chancery Court, Sixth Division, case number IJ97-2982.

(D)(i) The MSA contains both economic and noneconomic provisions.

(ii) Under the noneconomic terms, the cigarette manufacturers agree to various restrictions on their advertising and marketing practices as well as certain other aspects of their corporate behavior.

(iii) 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.

(E) The State of Arkansas's share will be approximately one billion seven hundred million dollars (\$1,700,000,000);

(3)(A) "Nonparticipating manufacturer" means any tobacco product manufacturer as defined in Arkansas Code § 26-57-260(9) that is not included in nor bound by the Master Settlement Agreement.

(B) 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;

(4) "Participating manufacturer" means any tobacco product manufacturer as defined in Arkansas Code § 26-57-260(9) that is included in and bound by the Master Settlement Agreement; and

(5) "Units sold" means all cigarettes and roll-your-own tobacco:

(A) Required by Arkansas law to have an Arkansas tobacco excise tax stamp affixed to the package containing such cigarettes or tobacco; and

(B) Sold by a manufacturer or wholesaler for retail sale within Arkansas either:

(i) Directly to consumers in Arkansas; or

(ii) Through tobacco product retail businesses located within Arkansas and licensed by the Arkansas Tobacco Control Board.

Authority. Arkansas Code § 26-57-206.

26 CAR § 163-103. General information.

(a) A nonparticipating manufacturer whose cigarettes or roll-your-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 Arkansas Code § 26-57-260(6) on or before April 15 of the year following the year for which the deposit is being made the following amounts:

- 1999, 0.94241 cents for each unit sold after April 6, 1999
- 2000, 1.04712 cents for each unit sold
- 2001 and 2002, 1.36125 cents for each unit sold
- 2003 through 2006, 1.67539 cents for each unit sold
- 2007 and each year thereafter, 1.88482 cents for each unit sold

(b)(1) Beginning March 15, 2000, and on or before March 15 of each subsequent year, the Department of Finance and Administration will provide each ascertainable nonparticipating manufacturer and the Attorney General with the units sold in Arkansas during the preceding calendar year.

(2) The department will obtain this information from:

- (A) The monthly tobacco excise tax reports filed with the department by tobacco distributors;
- (B) Information obtained during audits of tobacco distributors; and
- (C) Other sources that reflect the units sold in this state.

(3) This figure should be used by the nonparticipating manufacturer in calculating the proper amount of its escrow payment to Arkansas.

(4) Any nonparticipating manufacturer that disagrees with the units sold as determined by the department should notify both the department and the Attorney General of that disagreement by April 1 of that year.

(5) Notice to the department and the Attorney General should be sent to the address shown in subsection (g) of this section.

(c)(1) Nonparticipating manufacturers are ultimately responsible for the calculation of their escrow payments due to the State of Arkansas.

(2) The calculation should be performed as follows:

$$\begin{array}{rcl} \text{UNITS SOLD} & & \text{APPLICABLE ESCROW} \\ & \times & \text{PAYMENT RATE} \\ & & = \\ & & \text{TOTAL ESCROW PAYMENT} \\ & & \text{DUE ON OR BEFORE APRIL} \end{array}$$

(as defined in
26 CAR § 163-
102(5), above)

(as set forth in
subdivision (a)(2) of this
section, above)

15 OF EACH YEAR FOR THE
PRECEDING CALENDAR
YEAR

(d)(1) The department 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 that sell the nonparticipating manufacturer's products within Arkansas.

(2) The affected nonparticipating manufacturer and the Attorney General will be notified of any such adjustment from the department.

(3) Adjustments may be challenged administratively through the department's administrative hearing and review process in accordance with the Arkansas Tax Procedure Act, Arkansas Code § 26-18-101 et seq.

(e)(1) 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:

(A) The number of individual cigarettes, including roll-your-own tobacco, sold in Arkansas during the prior year; and

(B) That the appropriate amount of money has been deposited into the escrow fund.

(2) Verification of the deposit must be documented by a statement from the financial institution with whom the escrow account has been established.

(3) Written verification should be sent to:

Office of the Attorney General
Public Protection Department, Tobacco Division
323 Center Street, Suite 1100
Little Rock, AR 72201

(f)(1) Cigarette manufacturers, wholesalers, distributors, and retailers doing business in Arkansas shall cooperate with the department and the Office of the Attorney General in providing information required for the proper enforcement of Acts 1999, No. 1165.

(2) If deemed necessary, such manufacturers, wholesalers, distributors, and retailers may be audited as authorized under Arkansas Code §§ 26-18-305 and 26-57-212.

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

Office of the Attorney General
Public Protection Department, Tobacco 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 2420
Little Rock, AR 72203-8054
Telephone: (501) 682-7187
Fax: (501) 682-7900

Authority. Arkansas Code § 26-57-206.