CHAPTER 18

TOBACCO MASTER SETTLEMENT AGREEMENT.

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SUBCHAPTER I. ESTABLISHMENT OF RESERVE FUND BY TOBACCO PRODUCT MANUFACTURERS NOT PARTICIPATING IN THE MASTER SETTLEMENT AGREEMENT.

§ 7–1801.01. Definitions.

For the purpose of this subchapter, the term:

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

(3) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(4) "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; or (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 clause (1) 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 one individual "cigarette."

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

(6) "Qualified escrow fund" means an escrow arrangement with a federally, District of Columbia 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, accessing or directing the use of the funds' principal except as consistent with § 7–1801.02(2)(B).

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

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

(9)(A) "Tobacco Product Manufacturer" means an entity that after June 30, 1999 directly (and not exclusively through any affiliate):

(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 the 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 section II(mm) of the Master Settlement Agreement and that pays the taxes specified in section 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; or

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

(B) The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of subparagraph (A)(i)-(iii) of this paragraph.

(10) "Units sold" means the number of individual cigarettes sold in the District of Columbia 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 District of Columbia on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the District of Columbia. The Mayor shall promulgate such regulations as are necessary to ascertain the amount of District of Columbia excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

(July 18, 2000, D.C. Law 13–139, § 2, 47 DCR 3426.)

Historical and Statutory Notes

Emergency Act Amendments

For temporary (90–day) addition of section, see § 2 of the Tobacco Settlement Model Congressional Review Emergency Act of 2000 (D.C. Act 13–341, May 9, 2000, 47 DCR 4661).

Legislative History of Laws

Law 13–139, the "Tobacco Settlement Model Act of 2000," was introduced in Council and assigned Bill No. 13–332, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 7, 2000, and April 4, 2000, respectively. Signed by the Mayor on April 20, 2000, it was assigned Act No. 13–321 and transmitted to both Houses of Congress for its review. D.C. Law 13–139 became effective on July 18, 2000.

§ 7–1801.02. Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the District of Columbia (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after June 30, 1999 shall do one of the following:

(1) 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

(2)(A) 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):

(i) 1999: $.0094241 per unit sold after June 30, 1999;

(ii) 2000: $.0104712 per unit sold;

(iii) For each of 2001 and 2002: $.0136125 per unit sold;

(iv) For each 2003 through 2006: $.0167539 per unit sold; and

(v) For each of 2007 and each year thereafter: $.0188482 per unit sold.

(B) A tobacco product manufacturer that places funds into escrow pursuant to subparagraph (A) of this paragraph 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:

(i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the District of Columbia or any releasing party located or residing in the District of Columbia. Funds shall be released from escrow under this subparagraph 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;

(ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the District of Columbia's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(iii) To the extent not released from escrow under sub-subparagraphs (i) or (ii) of this subparagraph, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(C)(i) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this paragraph shall annually certify to the Chief Financial Officer of the District of Columbia that it is in compliance with this paragraph. The Corporation Counsel may bring a civil action on behalf of the District of Columbia 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:

(I) 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 paragraph, may impose a civil penalty in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% of the original amount improperly withheld from escrow;

(II) 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 paragraph, may impose a civil penalty 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% of the original amount improperly withheld from escrow; and

(III) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the District of Columbia (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed 2 years.

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

(D) If the District of Columbia prevails in a civil suit brought under subparagraph (C) of this paragraph, it shall also be entitled to attorneys' fees, plus the costs of the action.

(July 18, 2000, D.C. Law 13–139, § 3, 47 DCR 3426.)