



State of Alabama Department of Revenue

(www.revenue.alabama.gov)
50 North Ripley Street
Montgomery, Alabama 36132

April 11, 2014

MICHAEL E. MASON
Assistant Commissioner

JOE W. GARRETT, JR.
Deputy Commissioner

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Deputy Commissioner

NOTICE

TO: All Tobacco Manufacturers

SUBJECT: Act 2014-341 – NPM Legislation

On April 8, 2014, Governor Robert Bentley signed into law Act No. 2014-341 which became effective immediately. The Act makes several changes to Title 6, Chapter 12 and 12A, Code of Alabama 1975 concerning the tobacco Escrow Fund Provisions and Tobacco Master Settlement Complementary Legislation. The changes include:

- The definition of “units sold” has been amended to also include the number of individual cigarettes sold in the state by the 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 and/or collect excise tax. The term specifically includes the following cigarettes, provided such cigarettes were not sold in a transaction that is exempted from Alabama taxation by federal statute or constitution: (i) cigarettes sold to a consumer without payment of the cigarette excise tax on the reservation lands of a federally-recognized Native American tribe, (ii) cigarettes sold for retail sale in Alabama which were exempted from taxation pursuant to Chapter 9, Article 1 of Title 40 and/or any rule or regulation promulgated pursuant thereto, and (iii) cigarettes sold by a seller located outside of Alabama directly to a consumer in this state, without payment of the cigarette excise tax, via mail order, telephone, internet, or other remote means.
- “Importer” has been defined and has the same definition under State law as under federal law, 26 U.S.C. § 5702, which is any person in the United States to whom non-tax paid tobacco products or cigarette papers or tubes, or any processed tobacco, manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned; any person who removes cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully brings tobacco products or cigarette papers or tubes, or any processed tobacco, into the United States. In the case of units sold which are cigarettes manufactured outside the US and imported into the US by an importer:
 - Importers of the cigarettes shall be jointly and severally liable with the tobacco product manufacturers of the cigarettes for the escrow deposits required under Section 6-12-3 (a) (2).
 - Importers of the cigarettes may be sued to the same extent as the tobacco product manufacturer, and shall be subject to all of the same penalties remedies, or other relief that may be awarded against tobacco product manufacturers of the cigarettes.
 - If the importer of the cigarettes fails or refuses within 15 days of a written demand to deposit the funds into escrow for which it is jointly and severally liable, all cigarettes imported into the US

by the importer shall constitute contraband in the State of Alabama and shall be subject to seizure and forfeiture.

- Importers are also required to be registered to do business in Alabama, or have an appointed agent for service of process and provide proof of such appointment to the Commissioner.
- Each non-participating manufacturer is now required to do the following:
 - Include identification by name and address of any and all importers of cigarettes on its tobacco product manufacturer certification.
 - Hold and report its current and valid permit number issued under federal provisions 26 U.S.C. § 5713.
 - Obtain and post a bond to secure compliance with the escrow requirement. If it has not provided a compliant bond or has failed or refused to provide the documents and information requested to promote compliance per subsection (f) of Section 6-12A-5, the non-participating manufacturer/importer and its brands shall not be included in, or will be removed from, the Directory. The bond amount shall be the greater of (i) the greatest required escrow amount due from the non-participating manufacturer/importer or its predecessor for any of the 12 preceding calendar quarters or (ii) \$25,000.
 - Make quarterly escrow payments and certifications. If a non-participating manufacturer or jointly and severally liable importer fails to make a full and timely payment within 15 days following the due date for each quarter, the Commissioner may execute the bond to collect the unpaid amount due into escrow to include any applicable penalties or other charges.
- The effective date of the bond requirement will be 10 days before the beginning of the first quarter of 2015 (December 20, 2014). Any non-participating manufacturer/importer that has not provided a bond by this date will not have its brand families included in the Directory of Cigarettes Approved for Stamping and Sale in Alabama. Bond forms will be made available at a later date. Revised certification forms are enclosed.

Questions concerning this notice should be directed to the below address or telephone number.

Business and License Tax Division
Tobacco Tax Section
P O Box 327555
Montgomery, AL 36132-7555
(334) 242-9627