



ALABAMA DEPARTMENT OF REVENUE  
BUSINESS & LICENSE TAX DIVISION  
TOBACCO TAX SECTION

TOB: NPM-ESC INST  
4/14

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## Instructions for Certificate of Compliance by Non-Participating Manufacturer Regarding Escrow Payment (Including Importers)

### General Information:

#### What is the definition of a tobacco product manufacturer?

- Any entity that manufactures cigarettes, including roll-your-own, anywhere that such manufacturer intends to be sold in the United States including cigarettes that are intended to be sold in the United States through an importer;
- 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
- A successor of any entity described above.

#### Who is required to file this certificate of compliance?

- Any tobacco product manufacturer/importer which:
  - (1) sells cigarettes within the State of Alabama (whether directly or through any distributor, retailer, or similar intermediary) and
  - (2) has not become a participating manufacturer in the tobacco Master Settlement Agreement executed on 11/23/98 (the MSA).

*If you satisfy these requirements, you must file this certificate of compliance to report the units of cigarettes manufactured by you and sold in the State of Alabama and pay the amount calculated into your qualified escrow fund.*

#### What is a non-participating manufacturer?

A non-participating manufacturer is any tobacco product manufacturer who has not signed onto the MSA.

#### What is an importer?

An importer 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.

#### What is a qualified escrow fund?

A non-participating manufacturer that is required to file this certificate of compliance must establish a qualified escrow fund. This means an escrow arrangement with a U.S. federal or U.S. 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 (1) requires that the financial institution hold the escrowed funds' principal for the benefit of the State of Alabama (and possibly other "Releasing Parties" as defined in the MSA) and (2) prohibits the non-participating manufacturer from using, accessing, or directing the use of the funds' principal except as consistent with Title 6, Chapter 12, Section 2, **Code of Alabama 1975**.

#### When must I make my escrow payment?

You must deposit all escrow payments into your qualified escrow fund. After you have made your deposit, forward a copy of your receipt or other proof of deposit from your financial institution to the Commissioner of the Alabama Department of Revenue, along with this signed and notarized certificate of compliance. A copy of your qualified escrow agreement as executed and any subsequent amendments to the agreement must be forwarded to the Department of Revenue.

You are required to make quarterly deposits. Your payment into escrow must be made by the last day of the month following the end of the quarter. The calendar year shall be divided into the following quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31. Accordingly, non-participating manufacturers are required to make quarterly deposits by April 30, July 31, October 31, and January 31 respectively.

#### When is this certificate of compliance due?

You are required to make quarterly certifications. The certificates of compliance and bank verifications must be provided to the Department no later than ten (10) days after each quarterly deposit date. Quarterly certificates of compliance are to be filed on or before the following dates:

- (1) May 10 for the January 1 through March 31 quarter
- (2) August 10 for the April 1 through June 30 quarter
- (3) November 10 for the July 1 through September 30 quarter
- (4) February 10 for the October 1 through December 31 quarter.

#### What are units sold?

Units sold are 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, bearing the excise tax stamp of the state. In addition to and without limiting the foregoing, the term "units sold" shall also include 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 to and which the state had power to under federal law, but did not, impose and/or collect excise tax. Without limiting the foregoing, this 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.

**Specific Instructions:**

Part 1: Manufacturer's/Importer's Identification: Write your name, FEIN, address, telephone number, fax number, and federal permit number.

Part 2: Sales Year and Quarter: Write the sales year and check applicable quarter.

Part 3: Units Sold: Write the number of individual cigarettes and the amount of "roll-your-own" tobacco (.09 ounces constitutes one cigarette) manufactured/imported by you and distributed directly or

through a distributor, retailer, or similar intermediary or intermediaries during the sales quarter in Alabama.

Part 4: Escrow Rates and Payments: Multiply the units sold by the appropriate rate for the sales year and write the result as your subtotal. Calculate the appropriate inflation adjustment and enter the amount. Add the subtotal and the inflation adjustment amount to arrive at the total deposit to be paid into your qualified escrow account for the applicable sales quarter.

Part 5: Financial Institution: Write the name and address of the financial institution holding your escrow account. Include your escrow account number and State account number.

Part 6: Signature: An authorized notary public must also sign and date this certificate of compliance.