

TOBACCO PRODUCTS TAX ACT (EXCERPT)
Act 327 of 1993

205.426d Sale of cigarettes by nonparticipating manufacturer; information to be provided to department; payment of equity assessment; prepayment; stamp; prohibited conduct; publication of list of compliant nonparticipating manufacturers; seizure or confiscation; violation; service of process; brand previously sold; audit or review; definitions.

Sec. 6d.

(1) Before commencing sales of cigarettes in this state, whether directly or through a licensee or other distributor, retailer, or similar intermediary, a nonparticipating manufacturer shall provide to the department the information described in subsection (3) and shall pay the equity assessment as provided in subsections (4) and (5).

(2) A nonparticipating manufacturer selling cigarettes in this state on January 8, 2004, shall provide to the department the information described in subsection (3) and pay the equity assessment as provided in subsections (4) and (5) before February 8, 2004. If a nonparticipating manufacturer is not selling cigarettes in this state on January 8, 2004, before selling cigarettes in this state, the nonparticipating manufacturer shall pay the equity assessment imposed under subsections (4) and (5) for all cigarettes that are anticipated to be sold in the current calendar year as described in subsection (5).

(3) A nonparticipating manufacturer shall provide to the department on a form prescribed by the department the following information:

(a) The complete name, address, and telephone number of the nonparticipating manufacturer.

(b) The date that the nonparticipating manufacturer intends to begin or began selling cigarettes in this state.

(c) The brand names of the cigarettes the nonparticipating manufacturer will sell or is selling in this state.

(d) A statement of the nonparticipating manufacturer's intention to comply with its escrow obligation under 1999 PA 244, MCL 445.2051 to 445.2052, obligations under section 6c, and the obligations in this section.

(e) The name, address, and telephone number of the resident agent of the nonparticipating manufacturer.

(f) The name, address, telephone number, and signature of an officer of the nonparticipating manufacturer attesting to all of the information described in this subsection.

(4) An equity assessment in the amount of 17.5 mills per cigarette is imposed upon all cigarettes sold by a nonparticipating manufacturer, whether directly or through a licensee or other distributor, retailer, or similar intermediary, in this state. The purpose of the equity assessment is to fund enforcement and administration of 1999 PA 244, MCL 445.2051 to 445.2052, and this act. The equity assessment is in addition to all other fees, assessments, and taxes levied by law. The equity assessment shall be collected by the department from each nonparticipating manufacturer selling cigarettes in this state. The equity assessment shall be collected and reconciled by April 15 of each year for cigarettes sold in the previous calendar year. The department shall credit a nonparticipating manufacturer with any prepayment made by the nonparticipating manufacturer pursuant to subsection (5) for that calendar year.

(5) Except as provided in subsection (2), a nonparticipating manufacturer selling cigarettes in this state, whether directly or through a licensee or other distributor, retailer, or similar intermediary, shall prepay the equity assessment imposed in subsection (4) not later than March 1 for all cigarettes that are anticipated to be sold in the current calendar year. The prepayment amount shall be determined by multiplying 17.5 mills times the number of cigarettes that the department reasonably determines that the nonparticipating manufacturer will sell in this state in the current calendar year or \$10,000.00, whichever is more. The department may require a nonparticipating manufacturer to provide any information reasonably necessary to determine the equity assessment prepayment amount. Not later than February 15 of each year, the department shall notify the nonparticipating manufacturer of the amount of the prepayment due for the current year. The department shall increase the equity assessment prepayment amount during the year if the increase is justified by the nonparticipating manufacturer's actual sales of cigarettes.

(6) A stamping agent shall not affix to any package of cigarettes or shipping container of roll-your-own tobacco of a nonparticipating manufacturer the stamp required under this act unless the nonparticipating manufacturer is listed on the department website as provided in subsection (9) or after receiving notice that the nonparticipating manufacturer has not prepaid or paid in full the equity assessment imposed under this section. A stamping agent that violates this subsection is subject to the penalties described in section 5. If a stamping agent intentionally and knowingly violates this subsection, the department may seize or confiscate any cigarettes in the stamping agent's possession that were stamped in violation of this subsection. Seizure, confiscation, forfeiture, and sale of cigarettes shall be accomplished under section 9.

(7) A nonparticipating manufacturer that does not provide the information required under subsection (3) or pay the equity assessment required by this section shall not make a sale of cigarettes in this state to any person for sale, distribution, or consumption in this state.

(8) A person shall not purchase, acquire, possess, or sell cigarettes acquired from or manufactured by a nonparticipating manufacturer that has not provided the information required under subsection (3) or made the payment of the equity assessment required by this section.

(9) The department shall maintain and regularly update a list of nonparticipating manufacturers that have complied with the requirements of this section. The department shall publish the list on its website and provide a copy of the list to a person upon request. Subject to section 6f, the department may delist a manufacturer that no longer complies with this section.

(10) Ninety days after the department posts on its website and provides wholesalers and unclassified acquirers notice that a nonparticipating manufacturer is in violation of subsection (1) or (2), the department may seize or confiscate from any person any cigarettes in that person's possession that were acquired from or manufactured by that nonparticipating manufacturer. Seizure, confiscation, forfeiture, and sale of cigarettes under this section shall be accomplished under section 9.

(11) The department may impose on any person a civil fine not to exceed \$1,000.00 for each violation of this section. The civil fine is in addition to all other fines or penalties imposed by this act or 1941 PA 122, MCL 205.1 to 205.31.

(12) A nonparticipating manufacturer shall appoint and continually engage a resident agent for service of process. That service constitutes legal and valid service of process on the nonparticipating manufacturer.

(13) For purposes of this section, a nonparticipating manufacturer that intends to sell or is selling a brand of cigarettes in or into this state is presumed to be the same manufacturer that previously sold that same brand in or into the state, unless the nonparticipating manufacturer can prove that the 2 manufacturers are not affiliated. A nonparticipating manufacturer shall not sell in or into this state a cigarette brand that was previously sold in or into this state by another nonparticipating manufacturer if that other nonparticipating manufacturer did not escrow the entire amount due under 1999 PA 244, MCL 445.2051 to 445.2052, or pay the equity assessment due under this section.

(14) The department shall conduct an audit or review of nonparticipating manufacturers to ensure compliance with this section.

(15) As used in this section:

(a) "Cigarette" means that term as defined in 1999 PA 244, MCL 445.2051 to 445.2052.

(b) "Nonparticipating manufacturer" means a manufacturer of cigarettes that is not a participating manufacturer as that term is defined in 1999 PA 244, MCL 445.2051 to 445.2052. Nonparticipating manufacturer also includes 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.

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