

TOBACCO PRODUCTS TAX ACT (EXCERPT)
Act 327 of 1993

205.426c Acquisition of cigarettes from nonparticipating manufacturer.

Sec. 6c. (1) Every nonparticipating manufacturer whose cigarettes are sold in this state, whether directly or through a licensee or other distributor, retailer, or similar intermediary, shall by April 30 of each year certify to the department that it is not a participant in the master settlement agreement and that it has performed its obligation to establish a qualified escrow account and deposited funds into that account under 1999 PA 244, MCL 445.2051 to 445.2052.

(2) The certification of compliance must be on a form prescribed by the department, must contain all of the information requested on the form, and must include a list of all brand names of cigarettes sold by the nonparticipating manufacturer, whether directly or through a licensee or other distributor, retailer, or similar intermediary, for consumption in this state during the calendar year immediately preceding the certification date.

(3) A nonparticipating manufacturer shall provide a copy of the certification of compliance to the attorney general and any wholesaler, unclassified acquirer, or other person to whom the nonparticipating manufacturer makes a sale of its cigarettes for subsequent sale or consumption in this state.

(4) A wholesaler, unclassified acquirer, or other person who is provided with a certification of compliance under this section shall retain the certification of compliance for not less than 4 years from the date the certification of compliance was received.

(5) A wholesaler or unclassified acquirer shall report to the department all cigarettes that it acquires that were manufactured by a nonparticipating manufacturer. The report must be on a form prescribed by the department and attached to the return required under section 7. A wholesaler or unclassified acquirer that has not acquired any cigarettes from a nonparticipating manufacturer shall file the report with the return required under section 7 stating that it has not purchased, acquired, exported, or returned cigarettes related to a nonparticipating manufacturer. The information contained in this report is for the purposes of enforcing 1999 PA 244, MCL 445.2051 to 445.2052, and does not constitute information obtained in connection with the administration of a tax under section 28(1)(f) of 1941 PA 122, MCL 205.28. A wholesaler or unclassified acquirer shall retain a copy of the report for not less than 4 years from the date the report was filed with the department. If a wholesaler or unclassified acquirer does not file a report or knowingly files an incomplete or inaccurate report under this subsection, the department may do 1 or more of the following:

(a) Assess a penalty under this section.

(b) Prohibit the wholesaler or unclassified acquirer from obtaining cigarette stamps from the department until a complete and accurate report is filed.

(c) Revoke the wholesaler's or unclassified acquirer's license under section 5, only after conducting a hearing.

(6) A nonparticipating manufacturer that has not provided the certification of compliance required by this section shall not make a sale of cigarettes in this state or a sale within or outside this state to any person for sale, distribution, or consumption in this state.

(7) A person shall not purchase, acquire, possess, or sell cigarettes acquired from or manufactured by a nonparticipating manufacturer that has not provided the certification of compliance to the department as required under this section and that has not provided the person with a copy of the certification of compliance if required to do so under subsection (3).

(8) The department shall maintain and regularly update a list of participating manufacturers and nonparticipating manufacturers that have provided the certification of compliance required under 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.

(9) If a wholesaler or unclassified acquirer receives a certification of compliance from a nonparticipating manufacturer that is not included in the list maintained by the department, the wholesaler or unclassified acquirer shall within 10 business days after receiving the certification of compliance provide a copy of the certification of compliance and the name and address of the nonparticipating manufacturer to the department.

(10) Thirty days after the department posts on its website and provides wholesalers and unclassified acquirers a notice of a second or subsequent knowing violation of a provision of 1999 PA 244, MCL 445.2051 to 445.2052, or a notice of a judgment the department has against a nonparticipating manufacturer, 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. The department may seize or confiscate from any person any cigarettes in that person's possession that were acquired from or manufactured by a nonparticipating manufacturer if that nonparticipating manufacturer has not provided the certification

required by this section. 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) 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.

History: Add. 2002, Act 503, Imd. Eff. July 18, 2002;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.