



FYI Excise 18

Master Tobacco Settlement Agreement

GENERAL INFORMATION

What Is the Master Tobacco Settlement (MSA)?

In November 1998, 46 states, the District of Columbia and the five U.S. territories signed an agreement with the major tobacco companies to settle all state lawsuits seeking to recover the Medicaid costs of treating smokers. The Master Settlement Agreement (MSA), imposes certain restrictions on advertising, marketing and promotion of tobacco products. The MSA also requires tobacco product manufacturers to make payments totaling approximately \$206 billion through the year 2025.

The Master Settlement Agreement (MSA) with United States tobacco manufacturers was signed by the Colorado Attorney General on November 23, 1998 and a consent decree approved by the District Court for the City and County of Denver was entered on November 25, 1998. The Cigarette Tax Statute, Title 39, Article 28, was amended to include the model statute of the MSA effective July 1, 1999.

As a result of the MSA, the Colorado Tobacco Escrow Funds Law was enacted. This law requires tobacco companies that are non-participating under the MSA, pay into a qualified escrow account based on sales of cigarettes and roll-your-own tobacco in Colorado. This law is intended to create reserve funds for non-participating manufacturers to pay future claims. This law applies to cigarettes and roll-your-own tobacco only.

For additional information regarding the Master Settlement Agreement you may visit the Web site www.naag.org and select Projects, then select Tobacco, then select Settlement Documents.

MASTER TOBACCO SETTLEMENT STATE OBLIGATIONS

Participating and Non-Participating Manufacturers/Distributors

Under the MSA, participating states must identify non-participating manufacturers (NPM) and annually notify the NPM of their escrow obligation. Each NPM is required to establish an escrow account in a state or federal institution and certify the deposit of funds to the account based on the number of sticks or ounces of roll-your-own tobacco distributed in Colorado.

Distributors must identify the non-participating manufacturer brands within their cigarette and roll-your-own tobacco product lines. The National Association of Attorney Generals maintains a list of participating manufacturers and brands covered under the MSA. The list may be accessed at www.naag.org, Select Projects, then Tobacco, then Settlement Documents, then select MSA.

MASTER SETTLEMENT AGREEMENT REPORTING REQUIREMENTS

Each licensed cigarette and/or tobacco products distributor is required to file a monthly Licensed Distributor Reporting Form for Cigarette Sales of Non-Participating Manufacturer Brands (DR 1285) if cigarette brands manufactured by non-participating manufacturers are stamped and distributed for sale in Colorado. The following information is required when completing the form DR 1285: brand of NPM product, number of cigarette sticks sold, number of RYO ounces sold, conversion of RYO ounces sold to sticks, name of NPM manufacturer, name and address where product was purchased and if product was sold to tax-exempt government facility. Every non-participating RYO brand must be reported as ounces in Column C and sticks in column D. All columns must be completed before submitting to the Colorado Department of Revenue.

Distribution information is submitted to the Colorado Department of Revenue by licensed distributors who:

- affix the Colorado tax stamp on the packs of cigarettes, and/or
- distribute roll-your-own tobacco for cigarettes and are responsible for paying the tobacco products tax directly to the department.

The DR 1285 is due on the 20th day of each month and should be mailed to the Colorado Department of Revenue, Excise Tax Accounting Section, 1375 Sherman St., Room 237, Denver, CO 80261 or faxed to (303) 205-8204. The form DR 1285 may be obtained on the Web site at, www.TaxColorado.com

The information reported is subject to review by the Department of Revenue. Records must be maintained for five years. **NOTE:** Failure to file the monthly reports may result in revocation of the cigarette and/or tobacco products license for a period of two years.

RULES FOR REPORTING EXPORT AND/OR TRANSFERRED PRODUCT

Distributors who transfer product to both in and out-of-state licensed distributors are required to report such transactions on a monthly basis using form DR 1284. The DR 1284 tracks transfers of non-participating manufacturer cigarette and RYO brands for escrow purposes. For distributors who are required to file form DR 1284, this report complements the DR 1285 and is to be filed in addition to the DR 1285, not in lieu of. The DR 1284 must be submitted to the Office of the Attorney General by mail or faxed to (303)866-4916. The form DR 1284 is available on the Taxation Web site, www.TaxColorado.com

RULES FOR EXEMPTION FROM MONTHLY TO ANNUAL REPORTING

Pursuant to Regulation 39-28-202, a distributor may qualify for an exemption from monthly reporting using form DR 1286, Tobacco Distributor's Certificate for Exemption MSA/Non-Participating Manufacturer Brands. This form can be used if the distributor:

- Distributes only brands of cigarettes and/or roll-your-own tobacco manufactured by the participating manufacturers of the MSA;
- Purchases stamped cigarettes and/or roll-your-own tobacco on which the tobacco products tax has been paid from another licensed Colorado wholesaler;
- Distributes only other tobacco products not subject to the MSA (any other tobacco product that is not "roll-your-own" for cigarettes, such as cigars, hookah and smokeless tobacco.)

The DR 1286 exemption is valid for a period of 12 calendar months and must be renewed annually. Form DR 1286 is effective the full month the exemption certificate is received and accepted by the department.

The exemption becomes void when a distributor stamps and distributes cigarettes or roll-your-own tobacco manufactured by a non-participating manufacturer under the MSA. The DR 1285 is required beginning with the first month the NPM brands are stamped for Colorado and each month thereafter. If the distributor again becomes eligible for a DR 1286, the new annual exemption period will begin when the distributor files another certification. The signed original must be submitted to the department and a copy should be retained by the distributor. The DR 1286 is used to be exempt from monthly MSA reporting. The DR 1286 is not used for remittance of tax or payment. **NOTE:** Failure to file the reports may result in revocation of the cigarette and/or tobacco products license for a period of two years.

TOBACCO PRODUCT RETAILERS

A retailer holding a Colorado tobacco products license is considered a distributor/wholesaler and the MSA reporting and/or exemption requirements are applicable.

COLORADO CERTIFIED BRANDS DIRECTORY

Manufacturers are required to certify their compliance with the department and the Office of the Colorado Attorney General to be listed on the Colorado Certified Brands Directory. To sell a brand of cigarettes or roll-your-own tobacco in Colorado, a completed Tobacco Product Manufacturer Certification (DR 0231) must be submitted to the department and the Office of the Colorado Attorney General. Upon approval by the Office of the Attorney General, the brand will be listed on the Colorado Certified Brands Directory. The DR 0231 is available on the Web site at www.TaxColorado.com. The department maintains the list of brand names and their manufacturers and will provide the distributors a three (3)-calendar day notice before a brand is removed or "delisted." It is unlawful to sell, offer, or possess for sale any cigarette or roll-your-own tobacco brands not listed on the Certified Brands Directory. If a product is NOT listed or is removed from the list, it cannot be sold in Colorado and will be considered contraband and subject to confiscation.

In order to provide the notice to each distributor, a contact name and email address must be submitted to the department on form DR 1284, form DR 1285 or form DR 1286. Any subsequent change of the email address shall be submitted to the department by email or in writing within five (5) business days after the change of the email address. Regulation 39-28-303(2) (c). The address for email notification is mastersettlement@spike.dor.state.co.us

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed, and/or approved these FYIs.