# CHAPTER 51-25
# TOBACCO PRODUCT MANUFACTURER SALES

**51-25-01. Definitions.**

1. "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in exhibit C to the master settlement agreement.
2. "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns", "is owned", and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.
3. "Allocable share" means allocable share as that term is defined in the master settlement agreement.
4. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:
   a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
   b. Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or
   c. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision a.

   The term "cigarette" includes "roll-your-own", which means any tobacco that, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette", 0.09 ounces [2.556 grams] of "roll-your-own" tobacco constitutes one individual "cigarette".
5. "Master settlement agreement" means the settlement agreement and related documents entered on November 23, 1998, by the state and leading United States tobacco product manufacturers.
6. "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars if the arrangement requires that the financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with subdivision b of subsection 2 of section 51-25-02.
7. "Released claims" means released claims as that term is defined in the master settlement agreement.
8. "Releasing parties" means releasing parties as that term is defined in the master settlement agreement.
9. "Tobacco product manufacturer" means an entity that after April 8, 1999, directly, and not exclusively through any affiliate:
   a. Manufactures cigarettes anywhere that the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except when the importer is an original participating manufacturer, as that term is defined in the master settlement agreement, which will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and which pays the taxes specified in subsection II(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise the cigarettes in the United States);

b. Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere which the manufacturer does not intend to be sold in the United States; or

c. Becomes a successor of an entity described in subdivision a or b.

The term "tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless the affiliate itself falls within subdivision a, b, or c.

10. "Units sold" means 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. The state tax commissioner shall adopt rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of the tobacco product manufacturer for each year.

**51-25-02. Requirements.**

A tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after April 8, 1999, must do one of the following:

1. Become a participating manufacturer, as that term is defined in section II(jj) of the master settlement agreement, and generally perform its financial obligations under the master settlement agreement; or
2. a. Place into a qualified escrow fund by April fifteenth of the year following the year in question, the following amounts, as such amounts are adjusted for inflation:
   (1) 1999: $.0094241 per unit sold after April 8, 1999;
   (2) 2000: $.0104712 per unit sold;
   (3) For each of 2001 and 2002: $.0136125 per unit sold;
   (4) For each of 2003 through 2006: $.0167539 per unit sold; and
   (5) For each of 2007 and each year thereafter: $.0188482 per unit sold.

   b. A tobacco product manufacturer that places funds into escrow pursuant to subdivision a shall receive the interest or other appreciation on the funds as earned. The funds may be released from escrow only under the following circumstances:
   (1) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds must be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under the judgment or settlement;
   (2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement, including after final determination of all adjustments, that the manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess must be released from escrow and revert back to such tobacco product manufacturer; or
   (3) To the extent not released from escrow under paragraph 1 or 2, funds must be released from escrow and revert back to the tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

   c. Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the state tax commissioner that it is in compliance with this subsection. The state tax commissioner shall refer every instance of noncompliance to the attorney general. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section.

Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section must:

(1) Be required within fifteen days to place the funds into escrow as will bring it into compliance with this section. The court, upon a finding of a violation of this subdivision, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow;

(2) In the case of a knowing violation, be required within fifteen days to place the funds into escrow as will bring it into compliance with this section. The court, upon a finding of a knowing violation of this subdivision, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow; and

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

Each failure to make an annual deposit required under this section constitutes a separate violation.