



OFFICE OF THE ATTORNEY GENERAL
CIVIL LITIGATION DIVISION
CONSUMER PROTECTION & ADVOCACY SECTION

MEMORANDUM

TO: Addressees identified in the appendix hereto

FROM: David W. Garbarino, Senior Litigation Counsel

DATE: August 27, 2015

RE: Preservation of documents relating to the enforcement of Arizona's tobacco product manufacturers escrow account and directory statutes, Ariz. Rev. Stat. §§ 44-7101 & 44-7111

DIRECTIVE

On November 6, 2007, the Arizona Attorney General's Office (the "AGO") issued a document preservation directive to numerous state offices and agencies (the "Directive") requiring the preservation and retention of all documents relating to the following matters:

- (1) Enforcement of tobacco product manufacturers escrow account statute, Ariz. Rev. Stat. ("A.R.S.") § 44-7101 (the "Escrow Statute");
- (2) Enforcement of the tobacco product manufacturers directory statute, A.R.S. § 44-7111 (the "Directory Statute"); and
- (3) The 1998 Master Settlement Agreement with tobacco manufacturers (the "MSA") and any legal proceedings related thereto.

The AGO updated the Directive on August 20, 2010, and on July 23, 2014. This memorandum is the third update of the Directive, and constitutes a continuing and ongoing directive requiring the proper preservation, management and handling of documents containing information that may be relevant to the matters identified above.

This directive relates to documents in your agency's files (including all divisions, sections and units), both paper and electronic (including databases), as well as documents, both paper and electronic (including databases), in the possession, custody or control of persons for whom you have responsibility and/or oversight. The term "documents" is interpreted broadly to include paper, electronic, audio and video recordings, computer-based records (i.e., databases), e-records/digital records, and any other recorded forms of information. The term "documents" includes both "public records" and "non-public records." It is imperative that any documents subject to this directive be identified, separated from other files, and preserved and protected from destruction or alteration. The potentially relevant time

period starts in 1998 and continues indefinitely (or until the AGO advises). The documents subject to this directive should be maintained and preserved regardless of their date. All documents that may relate to the State's efforts to enforce the Escrow and Directory Statutes must be maintained in their original state, without destruction or alteration. Examples of documents subject to this directive include documents related to the following matters:

- Payments made by tobacco manufacturers to the State pursuant to the MSA;
- Tobacco manufacturers, wholesalers, distributors and retailers;
- Tobacco sales;
- Tobacco purchases;
- Applications for tobacco distributor licenses;
- Tobacco distributor licenses;
- Luxury tax documents relating to tobacco, including Arizona Department of Revenue Forms 811, 800-20, 800-25, 800NR, 805, 819, 819NR, 840, 841, 848, and 800-DS;
- Luxury tax returns relating to tobacco and all schedules and attachments thereto;
- Luxury tax reports relating to tobacco tax, and any statistical summaries;
- Luxury tax audits, assessments, reviews and related documents including work papers relating to tobacco;
- Luxury tax inspections and seizures relating to tobacco;
- Jenkins and PACT Act Reports and related documents;
- Communications with federal authorities, including the Alcohol and Tobacco Tax and Trade Bureau, related to tobacco;
- Tobacco stamp shipment/inventory records;
- 600 Refund Claim Forms authorizing refunds for tobacco taxes paid;
- Indian tax ratio notifications and any tribal ordinance amendments;
- Investigations relating to tobacco;
- Citations relating to tobacco;
- Tobacco Directory certifications;
- The Arizona Cigarette Directory;

- Tobacco escrow accounts and payments;
- Administrative, civil and criminal investigations, enforcement and proceedings (including agency-level, Office of Administrative Hearings, state and federal court) relating to tobacco;
- Statutes, regulations, policies, rulings, tribal ordinances and compacts relating to tobacco;
- Budgets and funding for tobacco enforcement;
- Job descriptions, salaries and time records of State employees engaged in enforcement of the Escrow and Directory Statutes;
- Legislative testimony and preparation for legislative testimony involving topics related to the Escrow and Directory Statutes, tobacco taxation, and other tobacco-related subjects;
- Public hearings, preparation for public hearings and any public comment involving any topic relating to the Escrow and Directory Statutes, tobacco taxation, and other tobacco-related subjects;
- Communications with the federal government, state governments, tribal governments or tobacco manufacturers, wholesalers, distributors, retailers and/or their employees, relating to tobacco topics, including but not limited to studies, reports, and agreements;
- Reviews, evaluations, studies or audits of the AGO's Tobacco Enforcement Unit of the Consumer Protection and Advocacy Section; the Department of Revenue's Luxury Tax Division of the Audit Section; or the Department of Revenue's Tobacco Enforcement Unit of the Criminal Investigations Section;
- Communications with National Association of Attorneys General relating to tobacco topics relevant to the MSA, subsequent settlement agreements, and/or arbitration/litigation related thereto;
- Pleadings, court filings, and discovery received and produced in any case filed to enforce the Escrow and/or Directory Statutes;
- Any document identified in Exhibit A attached hereto (letter from PMs' counsel making public records request, dated February 24, 2005, relating to categories of tobacco documents);
- Certifications, waivers and bond documents submitted pursuant to the Escrow and Directory Statutes;
- Investigations related to, and enforcement of, A.R.S. § 36-798.06;
- Investigations related to, and enforcement of, A.R.S. § 13-3711; and

- Materials related to sales of tobacco on tribal lands in Arizona, including materials related to the payment of tribal tobacco excise taxes.

The above list is not comprehensive, and is not intended to act as a substitute for careful review of all files to identify those documents that may be subject to this directive.

Please contact David W. Garbarino, Senior Litigation Counsel, Office of the Attorney General, 602.542.7932, with respect to questions relating to this continuing directive and/or document management.

BACKGROUND

A. The MSA

In 1998, the State of Arizona (the "State" or "Arizona"), along with numerous other states, entered into a Master Settlement Agreement (the "MSA") with tobacco product manufacturers to resolve the litigation captioned *State of Arizona v American Tobacco Co., Inc., et al.*, CV1996-014769 (Ariz. Super., Maricopa Cnty.), and similar suits brought by the other states to recover costs stemming from tobacco-related illnesses. The MSA allows non-party tobacco product manufacturers to subsequently agree to become parties to, and bound by, the MSA. A tobacco product manufacturer that is a party to the MSA is referred to as a "Participating Manufacturer" or "PM." A tobacco product manufacturer that is not a party to the MSA is referred to as a "Non-Participating Manufacturer" or "NPM."

In consideration for the release of the settling states' claims against the PMs, the MSA obligates the PMs to make substantial annual payments to the settling states in perpetuity. Payments made by the PMs are allocated among the settling states based on "Allocable Shares" set forth in the MSA. By statute, all settlement payments received by the State must be used for the Arizona Health Care Cost Containment System.

Without more, the PMs' payment obligations under the MSA would give NPMs a competitive advantage over the PMs. To level the playing field, the MSA requires the settling states to enact and enforce a "Qualifying Statute," referred to in Arizona as the "Escrow Statute," to "fully neutralize[] the cost disadvantages." In Arizona, the Escrow Statute is codified at A.R.S. § 44-7101. The Escrow Statute requires NPMs to: (1) establish and maintain escrow accounts, and (2) to make payments to those escrow accounts equal to the payments the NPMs would have made under the MSA had the NPMs elected to become parties to, and bound by, the MSA. See A.R.S. § 44-7101 sec. 3. In other words, the Escrow Statute imposes similar financial obligations upon NPMs as those financial obligations imposed upon PMs by the MSA to level the playing field between PMs and NPMs.

To ensure a level playing field, the MSA provides that the PMs' payment to the settling states may be subject to a downward adjustment, referred to by the MSA as the "NPM Adjustment," if two conditions are met. The first condition is a specific percentage loss of the PMs' market share to NPMs as compared to 1997 levels (a "Qualifying Market Share Loss"). The second condition is a finding by an economic consulting firm that the MSA was a "significant factor" contributing to the market share loss. Even if both conditions are satisfied, however, no state is subject to the NPM Adjustment for that year if, during the year in

question, that state “continuously had a Qualifying Statute . . . in full force and effect . . . and diligently enforced the provisions of such statute” In other words, Arizona must diligently enforce the Escrow Statute to avoid an NPM Adjustment.

B. Enforcement of the Escrow Statute

To enhance the State’s ability to enforce the Escrow Statute, the Legislature enacted the Directory Statute in 2003, i.e., A.R.S. § 44-7111. The Directory Statute mandates that each tobacco product manufacturer that sells cigarettes in Arizona certify in writing that the tobacco product manufacturer is a PM or has complied with the Escrow Statute. See A.R.S. § 44-7111 sec. 3(a). Using the certifications received from tobacco product manufacturers, the Directory Statute requires the AGO to develop, maintain and publish on the AGO’s website a directory of all tobacco product manufacturers that have filed certifications of compliance. See *id.* § 44-7111 sec. 3(b). The Directory Statute renders it unlawful for anyone to either “affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family[] not included in the directory or . . . sell, offer or possess for sale, in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.” *Id.* § 44-7111 sec. 3(c). The term “stamp” refers to a colored marking placed upon a package of cigarettes by a licensed distributor before the package is sold by the distributor. No package of cigarettes may be sold in Arizona without a stamp. Distributors purchase the stamps from the Arizona Department of Revenue (“DOR”). The purchase price paid by a distributor for a stamp is the amount of the tax imposed upon a package of cigarettes. The stamp purchase price will vary depending on whether the package is to be sold on tribal or non-tribal lands and, if to be sold on tribal lands, whether the purchaser is a tribal member or not.

In 2012 the Legislature passed legislation to further ensure that cigarettes sold in Arizona pass through a licensed distributor. Specifically, the Legislature made it unlawful to allow telephone, internet, and/or mail sales or delivery of cigarettes to anyone other than (1) a licensed distributor, or (2) a retailer purchasing cigarettes from a licensed distributor. See *id.* § 36-798.06. Section 36-798.06 effectively requires an in-person transaction for a consumer to purchase a package of cigarettes. See *id.*

In 2013, the Legislature amended the Escrow and Directory Statutes. See 2013 Ariz. Sess. Laws., ch. 222, §§ 6-7. The 2013 amendment to the Escrow Statute clarified that the “units sold” definition includes all cigarettes sold in Arizona, including roll-your-own (“RYO”) and all cigarettes sold on tribal lands, see *id.* § 6 (amending A.R.S. § 44-7101 sec. 2(k)), and permitted NPMs to make an irrevocable assignment of escrow funds to the State, see *id.* (adding A.R.S. § 44-7101 sec. 3(c) and (d)). The 2013 amendment to the Directory Statute imposed a bond requirement for NPMs, *id.* § 7 (adding A.R.S. § 44-7111 sec. (3)(d)-(g)), required foreign NPMs to provide declarations from their importers accepting joint and several liability for escrow deposits, see *id.* (adding A.R.S. § 44-7111 sec. 3(h)), and expanded the grounds upon which the Arizona Attorney General could refuse to allow a NPM to be listed in the Directory, see *id.* (adding A.R.S. § 44-7111 sec. 3(i)). In addition to the amendments to the Escrow Statute and the Directory Statute, the Legislature also added a provision to Title 13 (the Criminal Code) requiring commercial use of roll-your-own (“RYO”)

machines to comply with state and federal laws and regulations applicable to tobacco product manufactures. *Id.* § 1.

The escrow account funding requirements imposed by the Escrow Statute on NPMs are calculated based on the NPM units sold. The Escrow Statute defines “units sold” to mean the number of individual cigarettes “sold to a consumer 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, regardless of whether state excise tax was due or collected.” A.R.S. § 44-7101(2)(k). The accuracy of the units sold amount is a fundamental concern when considering whether Arizona has diligently enforced the Escrow Statute.

In Arizona, the data used to calculate units sold comes from tax returns submitted to DOR by Arizona-licensed tobacco distributors. Generally, all cigarettes and roll-your-own cigarettes (“RYO”) sold to consumers in Arizona must first pass through an Arizona-licensed tobacco distributor. See *id.* §§ 36-798.06, 42-3401, 42-3403, 42-3451, 42-3454, 42-3457. A distributor must pay the appropriate excise tax to DOR by purchasing tax stamps from DOR that the distributor physically affixes to cigarette packs before it can sell the packs to a retailer. *Id.* §§ 42-3452 & 42-3456. Most importantly for Arizona’s Escrow Statute enforcement work, the distributor also must report on its tax returns its inventory activity. That is, the distributor must report on its tax returns its beginning inventory, purchases, sales, and ending inventory by manufacturer and brand family names to DOR on a monthly basis. *Id.* § 42-3462.

The AGO is responsible for determining whether an NPM is in compliance with the Escrow Statute, and if not, for demanding compliance. The information distributors report to DOR on the distributors’ tax returns is the primary means for the AGO to verify whether NPMs are in compliance with the Escrow Statute. DOR is charged with the responsibility of enforcing the tobacco tax return reporting laws to ensure the accuracy of the information the AGO uses to enforce the Escrow Statute.

C. Diligent enforcement disputes

In 2004 the Independent Auditor concluded that the PMs had collectively experienced a Qualifying Market Share Loss in 2003 (the “2003 Market Share Loss”). Approximately two years later, in March 2006, an economic consulting firm determined that the MSA was a “significant factor” contributing to the 2003 Market Share Loss. For these reasons, the PMs requested the Independent Auditor to apply an NPM Adjustment against their annual payment due in April 2006.

On March 29, 2006, the Independent Auditor issued its final calculation for the annual payments due in April 2006, but declined to apply an NPM Adjustment. The Independent Auditor acknowledged that the PMs maintained that some states (whom the PMs failed to identify) had not diligently enforced their Escrow Statutes in 2003, but the Independent Auditor denied the PMs’ request for an NPM Adjustment, reasoning that it would not change its prior approach to the 2003 NPM Adjustment. The Independent Auditor’s prior approach had been to presume diligent enforcement by the states until that issue was raised before and resolved by a trier of fact. On April 10, 2006, the PMs served notice that they disputed

the Independent Auditor's refusal to apply an NPM Adjustment in its final calculation of the April 2006 payment.

On September 13, 2006, the PMs made an arbitration demand on Arizona (the "PMs' Demand"). The PMs' Demand described the disputes sought to be arbitrated as "disputes relating to the [Independent Auditor's] determination not to apply an offset as to the [PMs' April 17, 2006, payment in the amount of the 2003 [NPM] Adjustment, including any claim by one or more of the Settling States that they are not subject to the NPM Adjustment because they diligently enforced a Qualifying Statute [throughout] 2003." Arizona objected to the PMs' Demand, contending that the issue of whether Arizona diligently enforced its Escrow Statute was not subject to arbitration. The PMs filed a Motion to Compel Arbitration in Arizona Superior Court of two separate and distinct issues: (a) whether the Independent Auditor appropriately refused to apply an NPM Adjustment against the PMs' 2006 payment, and (b) whether Arizona diligently enforced the Escrow Statute in 2003 (the "2003 Diligent Enforcement Dispute"). After briefing and oral argument, the trial court ordered that these disputes were subject to arbitration. The court of appeals agreed.

On October 25, 2007, the PMs sent a letter asking that Arizona, along with the other settling states, cooperate with the PMs to select the arbitration panel and to commence the arbitration process. Arizona engaged in negotiations with approximately twenty-four other states and the PMs to establish a framework for a multistate arbitration, including a potential limitation on liability for states voluntarily participating in that arbitration. The result of these negotiations was an "Agreement Regarding Arbitration," which Arizona, approximately forty-three other States, and the majority of the PMs executed by January 2009. The states and the PMs selected their respective arbitrators for the panel. The party-appointed arbitrators then selected a third neutral arbitrator, forming the complete arbitration panel on July 2, 2010.

While the arbitration proceeded, certain states, including Arizona, actively engaged in settlement discussions. Those settlement discussions led to a Memorandum of Understanding and Term Sheet which, upon the stipulation of the PMs and twenty-four states including Arizona, the arbitration panel entered into the arbitration record as part of a Stipulated Partial Settlement and Award. The drafting of a formal settlement agreement is currently underway.

D. A preservation directive is necessary

Although a settlement agreement has been reached as to the 2003 Diligent Enforcement Dispute, it is anticipated that PMs will dispute and challenge Arizona's diligent enforcement efforts for later years, thereby making information and documents relating to the State's efforts to enforce the Escrow Statute during any year possibly relevant and/or reasonably likely to lead to the discovery of admissible evidence. It is also possible that such information and documents could be sought in other arbitration proceedings to which Arizona is not a party, i.e., arbitration proceedings involving one or more PM's and one or more other states. Accordingly, it is essential that the State and its agencies retain documents related to its enforcement efforts for these reasons: (a) to demonstrate and support the State's positions and arguments that it has engaged in diligent enforcement efforts that satisfy any obligations and/or standards imposed by the MSA and subsequent settlement agreement; (b)

to avoid any spoliation of evidence claim or sanction that could hinder the State's ability to present its evidence and arguments; and (c) to comply with discovery requests made in other arbitrations/proceedings.

APPENDIX

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Exhibit A



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February 24, 2005

Terry Goddard
Attorney General of the State of Arizona
Office of the Attorney General
Department of Law
1275 West Washington Street
Phoenix, Arizona 85007

J. Elliot Hibbs
Director
Arizona Department of Revenue
1600 W. Monroe
Phoenix, Arizona 85007-2650

Re: Public Records Request

Dear Attorney General Goddard and Director Hibbs:

I am writing on behalf of Philip Morris USA Inc., R.J. Reynolds Tobacco Company and Lorillard Tobacco Company, companies registered to do business in the State of Arizona. Pursuant to Arizona's Public Records Law, Ariz. Rev. Stat. §§ 39-121, *et seq.*, I hereby request photocopies of the documents set forth on the accompanying list. As the Overview section at the beginning of that list explains, I am requesting, *inter alia*, all public records that contain information pertaining to the amounts budgeted and spent and the measures taken or considered by the State of Arizona or any of its divisions to identify nonparticipating tobacco product manufacturers and to monitor and enforce their compliance with Ariz. Rev. Stat. § 44-7101.

In accordance with Ariz. Rev. Stat. § 39-121.01(D)(1), I expect that your written response will be provided promptly, and in any event no later than thirty (30) days from receipt of this request. I hereby agree to pay the costs to locate and copy the requested materials up to Five Thousand Dollars (\$5,000). If the costs will exceed that amount, please contact me before incurring those costs.

DLA PIPER RUDNICK
GRAY CARY

If you have any questions regarding this request, please contact me. Your prompt attention to this matter is appreciated.

Sincerely,



Alexander Shaknes
*Counsel for Philip Morris USA Inc. and, for this
purpose only, on behalf of R.J. Reynolds Tobacco
Company and Lorillard Tobacco Company*

DOCUMENT LIST

Overview

In 2000, the Arizona State Legislature enacted Chapters 83 (H.B. 2313) and 366 (H.B. 2658) (collectively, the "Escrow Act"). The "Findings and Purpose" section of the Escrow Act provides, among other things, as follows:

On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "master settlement agreement," with the state. The master settlement agreement obligates these manufacturers, in return for a release of past, present, and certain future claims against them as described therein, to pay substantial sums to the state

It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such [nonparticipating] manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

2000 Ariz. Legis. Serv. Ch. 83 (H.B. 2313), § 1(e); 2000 Ariz. Legis. Serv. Ch. 366 (H.B. 2658), §1(e).

Accordingly, the Escrow Act, as amended, requires any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) either to become a participating manufacturer (*i.e.*, a signatory to the Master Settlement Agreement) or to place each year into a qualified escrow fund certain dollar amounts per each individual cigarette sold by such Nonparticipating manufacturer in the State during the preceding year. *See* Ariz. Rev. Stat. § 44-7101(3).

The purpose of this public records request, as set forth more specifically below, is to obtain photocopies of all documents that contain information pertaining to the measures taken by

the State of Arizona to identify nonparticipating tobacco product manufacturers and to monitor and enforce their compliance with the Escrow Act and its implementing and related statutes and regulations.

Instructions

1. Please address all communications and provide the requested records to:

Alexander Shaknes, Esq.
DLA Piper Rudnick Gray Cary US LLP
1251 Avenue of the Americas
New York, NY 10020-1104

Telephone: 212-835-6000

Facsimile: 212-835-6001

2. Please note our willingness to meet and confer, in person or via telephone or e-mail, to discuss or clarify any issues that may arise regarding the scope of our requests.

3. If you are not the custodian of any of the requested records, please advise us within ten (10) days of the name of the appropriate custodian and the location of the records.

4. In accordance with Ariz. Rev. Stat. § 39-121.01(D)(1), please forward a decision granting or denying this request promptly, but no later than 30 days from receipt of this request.

5. In accordance with Ariz. Rev. Stat. § 39-121.01(D)(2), if all or any part of this request is denied, please provide a written index of the records that have been withheld and the reasons the records have been withheld.

6. If you determine that only some portions of the requested records are exempt from disclosure, please provide all records or portions of records that can be disclosed.

7. Please provide any requested records as soon as they can be located and do not wait until all requested records can be located.

8. Please advise as to the photocopy and postage costs for the production of all records located.

Definitions

"Cigarette" has the same meaning prescribed in Ariz. Rev. Stat. § 44-7101(2)(d).

"Escrow Act" means Chapters 83 (H.B. 2313) and 366 (H.B. 2658) of the Arizona Laws of 2000, as amended.

Escrow Act "implementing and related statutes and regulations" means Ariz. Rev. Stat. §§ 44-7101, 44-7111 and any regulations promulgated thereunder.

"Governmental Unit" means the State government as a whole and any division, department, agency, or other unit within the State government.

"Nonparticipating manufacturer" has the same meaning prescribed in Ariz. Rev. Stat. § 44-7111(2)(g).

"Pertaining to" means referring to, relating to, connected with, responding to, describing, supporting, contradicting, and/or constituting.

"Records" means the original or any copy of any documentary material that:

- (i) is made by a governmental unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and
- (ii) is in any form, including:
 - (1) a document;
 - (2) an e-mail;
 - (3) a computerized record;
 - (4) correspondence;
 - (5) film or microfilm;
 - (6) a form;
 - (7) a photograph or photostat;

(8) a recording; or

(9) a tape.

"State" means the State of Arizona.

Records Requested

1. All records pertaining to the identities of, and number and brand of cigarettes sold in the State by, all nonparticipating manufacturers which have sold cigarettes in the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) since April 24, 2000, including without limitation all records encompassed in Requests 2, 3, 4 and 5 below.

2. All records pertaining to the steps or measures taken or considered by any Governmental Unit to determine the identities of, and number and brand of cigarettes sold in the State by, all nonparticipating manufacturers which have sold cigarettes in the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) since April 24, 2000.

3. All records pertaining to the steps or measures taken or considered by any Governmental Unit to monitor compliance with the Escrow Act and its implementing and related statutes and regulations by all nonparticipating manufacturers which have sold cigarettes in the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) since April 24, 2000.

4. All records pertaining to the steps or measures taken or considered by any Governmental Unit to enforce or attempt to enforce compliance with the Escrow Act and its implementing and related statutes and regulations by all nonparticipating manufacturers which have sold cigarettes in the State (whether directly or through a distributor, retailer or similar

intermediary or intermediaries) since April 24, 2000, including, without limitation, all correspondence, investigations, penalties threatened or assessed, administrative actions, mediations, arbitrations, lawsuits, and appeals, and the dates thereof.

5. All reports and certifications submitted since April 24, 2000 by any nonparticipating manufacturer to any Governmental Unit pursuant to, or in connection with, the Escrow Act and its implementing and related statutes and regulations, including without limitation with respect to (i) the name of the financial institution where the nonparticipating manufacturer has established an escrow account pursuant to the Escrow Act and its implementing and related statutes and regulations, (ii) the amount the nonparticipating manufacturer placed in such account(s) at any time, (iii) the date and amount of each such deposit, and (iv) the date and amount of any withdrawal or transfer of funds from such account(s) made by the nonparticipating manufacturer.

6. All records pertaining to the amounts requested as part of any budget preparation by any Governmental Unit since April 24, 2000 for expenditures relating to:

(a) determining the identities of, and number and brands of cigarettes sold by, any nonparticipating manufacturers;

(b) monitoring compliance with the Escrow Act and its implementing and related statutes and regulations by all nonparticipating manufacturers; and

(c) enforcing or attempting to enforce compliance with the Escrow Act and its implementing and related statutes and regulations by all nonparticipating manufacturers.

7. All records pertaining to the amounts actually budgeted as part of any budget prepared by any Governmental Unit since April 24, 2000 for expenditures relating to:

(a) determining the identities of, and number and brands of cigarettes sold by, any nonparticipating manufacturers;

(b) monitoring compliance with the Escrow Act and its implementing and related statutes and regulations by all nonparticipating manufacturers; and

(c) enforcing or attempting to enforce compliance with the Escrow Act and its implementing and related statutes and regulations by all nonparticipating manufacturers.

8. All records pertaining to the amounts actually spent since April 24, 2000 by any Governmental Unit for expenditures relating to:

(a) determining the identities of, and number and brands of cigarettes sold by, any nonparticipating manufacturers;

(b) monitoring compliance with the Escrow Act and its implementing and related statutes and regulations by all nonparticipating manufacturers; and

(c) enforcing or attempting to enforce compliance with the Escrow Act and its implementing and related statutes and regulations by all nonparticipating manufacturers.

9. All records pertaining to the job descriptions, salaries and number of, and amount of time expended during each calendar year by, all persons employed by the State since April 24, 2000 to determine the identities of nonparticipating manufacturers and to monitor and enforce their compliance with the Escrow Act and its implementing and related statutes or regulations.

10. All records pertaining to cigarettes sold within the State by any Native American Tribe, including without limitation all records pertaining to the steps or measures taken or considered by any Governmental Unit (a) to determine the quantities of such sales and (b) to monitor and enforce compliance with the Escrow Act and its implementing and related statutes and regulations with regard to such sales.

11. All records pertaining to "roll your own" tobacco sold within the State, including without limitation all records pertaining to the steps or measures taken or considered by any Governmental Unit (a) to determine the quantities of such sales and (b) to monitor and enforce compliance with the Escrow Act and its implementing and related statutes and regulations with regard to such sales.

12. All records pertaining to cigarettes sold within the State via the internet or direct mail order, including without limitation all records pertaining to the steps or measures taken or considered by any Governmental Unit (a) to determine the quantities of such sales and (b) to monitor and enforce compliance with the Escrow Act and its implementing and related statutes and regulations with regard to such sales.

13. All records pertaining to imported cigarettes sold within the State, including without limitation all records pertaining to the steps or measures taken or considered by any Governmental Unit (a) to determine the quantities of such sales and (b) to monitor and enforce compliance with the Escrow Act and its implementing and related statutes and regulations with regard to such sales.

14. All records pertaining to information regarding nonparticipating manufacturers that was requested by, compiled for, or provided to the National Association of Attorneys General ("NAAG"), the NAAG tobacco enforcement committee or any other subdivision or employee of NAAG, or any person in the office of any state or territorial attorney general.

15. All records pertaining to information regarding nonparticipating manufacturers that was received from NAAG, the NAAG tobacco enforcement committee or any other subdivision or employee of NAAG, or any person in the office of any state or territorial attorney general.

16. All records pertaining to any deliberations by State employees or communications with NAAG, the NAAG tobacco enforcement committee or any other subdivision or employee of NAAG, or any person in the office of any state or territorial attorney general, with respect to the scope or interpretation of the Escrow Act and its implementing and related statutes and regulations, including without limitation (i) the interpretation of the term "units sold," (ii) the

applicability of the Escrow Act and its implementing and related statutes and regulations to tobacco products not subject to state excise tax or to tax stamping requirements, and (iii) the applicability of the Escrow Act and its implementing and related statutes and regulations to imported cigarettes or cigarettes sold via internet or direct mail order, or by any Native American Tribe.

17. All records pertaining to nonparticipating manufacturers listed on Attachment A hereto, including without limitation all records relating to any correspondence with, investigations of, or enforcement actions against any such Nonparticipating manufacturer,

ATTACHMENT A

3B Holdings, Inc.
A & H Tobacco Co.
Amministrazione Dei Monopoli Di Stato (Italian State Monopoly)
Altadis
Alternative Brands
American Automotive Security Products
American Virginia Industria E Comercia De Importacao
Apara International
Atlanta US Brands
BBM Group
Beatall
Bengal Tobacco Corp.
Bulgartabac Holding Group, PLC
CPI USA, Inc.
Capitol Tobacco Co., Inc.
Carolina Tobacco Co. a/k/a Carolina Tobacco Corp.
Changchun Cigarette Factory
Changde Cigarette Factory
China National Tobacco Corp.
China National Tobacco Import & Export Co., a/k/a China National Tobacco Import & Export Corp.
China Tobacco Import & Export Hunan Corp.
China Tobacco Import & Export Liaoning Corp.
Choice Tobacco Inc.
Cigarrera la Moderna SA DE CV
Cigatam SA DE CV
Cigtec Tobacco, LLC
Coastline Trading Corp.
Compania Colombiana De Tabaco S.A., a/k/a CIA. Colombiana De Tabaco S.A., a/k/a Coltabaco

Continental Pacific Manufacturing Corp.
DC Inc., a/k/a Dirt Cheap Cigarettes, a/k/a WWW.DIRTCHEAPCIG.COM
Direct Delivery LLC
Dood Enterprises, Inc.
Douwe Egberts Tobacco Co.
Douwe Egberts Van Nelle
Dubek, Ltd. a/k/a Dubeck, Ltd.
Earth Tobacco Corp.
Eurolider
Eti-Ente Tabbachi Italiani S.P.A.
Fortune Tobacco Corp.
G.B. Tobacco International Ltd. a/k/a Golden Brown International Limited
Georgio S.A. Keranis Viomichaniki Emporiki & Ependytiki Anonymous a/k/a Etaireia G.A.
Keranis V.E.E.E. (Industry and Holding S.A.) a/k/a Keranis Holdings S.A. a/k/a G.A. Keranis
S.A.
G.H. Jani Bidis P. Ltd.
Grand River Enterprises Six Nations Ltd.
"Grand Tobacco" Armenian-Canadian Joint Venture Ltd.
GTC Industries Ltd. a/k/a Golden Tobacco Company
Gudang Garam TBK Import
Gulf Conversion Corp. a/k/a Gulf Conversion LLC
Gunvantrai Harivallabh Jani Bidies
Heupink & Bloemen Tabak B.V
House of Prince A/S
Intercontinental Pacific Manufacturing Co. a/k/a Intercontinental Pacific Manufacturing Corp.
International Pacific Manufacturing
International Tobacco Brokers
JASH International, Inc. a/k/a JASH Tobacco Corporation
Jilin Tobacco Import & Export Co., Ltd.
Joh Wilhelm Von Eicken GMBH
John Middleton, Inc.
KT&G Corp. a/k/a Koven Tobacco & Ginsbeg Corp

Karelia Tobacco Co., Inc.
Kisanlal Bastiram Sarda
La Campana Fabrica De Tabacos Inc.
M & R Holdings, Inc.
MBR International Corp.
M/S Mohanlal Hargovinddas
Mangalore Ganesh Beedi Works
Mary Milvia Corp.
Mighty Corp.
Multinational Tobacco, Inc.
Nanyang Brothers Tobacco Co. Ltd.
Native Enterprises
Ninio Enterprises, LTDA
North American Trading
NV Sumatra Tobacco Trading Corp.
Ohio Valley Wholesale Dist., Inc.
P.A.T. Marketing
Patriot Tobacco Company a/k/a Patriot Manufacturing
Phoenix Tobacco
Porro International Business Corp.
Poison, Inc.
Prime Mover
Protabaco S.A. Corp.
P.T. Bentoel Prima a/k/a PT Bentoel Prima Malang
PT Gudang Garam TBK
PT Perusahaan Rokok Tjap Gudang Garam
PT Wahana Sarana Baladika
RBJ Sales
Ranvir Bidi Works a/k/a Ganvantra Harivallabh Jani Pvt. Ltd
Red Hawk Tobacco
Reemtsma Cigarettenfabriken GMBH
Larry W. Riddell d/b/a J.R.'s Wholesale

Renegade Tobacco Corp.
Ridgeway Brands Manufacturing f/k/a Bell Quality Tobacco
Robert A. Gordon Cigarette Co.
Royal Tobacco, Inc.
Ryan, Inc.
Ryan Roll Leaf, Inc.
Quality Tobacco Distributors
Sable Waghire & Co., Ltd.
Sekap, S.A. Greek Cooperative Cigarette Manufacturing Co.
Seneca-Cayuga Tobacco
Shrirang Kisanlal Sarda
Shrirang Sarda
Single Stick, Inc.
Sinnar Bidi Udyog Ltd.
Smokers Choice
Smokin Joes
Southern Tobacco, Inc.
Stuart White, d/b/a Native Trading Associates
Sterling Tobacco International, Inc.
Sulamericana de Tabacos S.A.
Sun Tobacco, Inc.
T P Thai Charoenkul a/k/a T P Thai Charonekul Import/Export Co., Ltd.
Tabacalera Boqueron S.A.
Tabacalera Hernandarias
Tabacalera Nacional S.A.
Tabacalera Nacional, S.A.A. of Peru
Taiwan Tobacco & Liquor Corp.
Tekel Marketing & Distribution
Th.,D. Georgiades, S.A
Timcorp International Marketing Co., Ltd.
Tobacco Center, Inc.
Universal Hamilton Manufacturing Corp.

Vietnamese Tobacco

York International Industries, Inc.

Yuxi Hongta Tobacco Group