

HB 2128B FAQ – LEGAL ISSUES

WHAT IS THE “MASTER SETTLEMENT AGREEMENT (MSA)?”

In 1998, the nation’s major cigarette companies entered into an agreement with 46 states - including Oregon - to pay annual damages as a remedy related to prior litigation over an alleged 40-year conspiracy to suppress information about the hazards of smoking and the addictive character of nicotine and for deceptive marketing practices. The payments continue today.

The MSA required each state that was party to the agreement to adopt a qualifying statute to receive settlement payments. Oregon based their qualifying statute on the model statute from the MSA, which was enacted with SB 792 in 1999 (Chapter 272 Oregon Laws 1999).

WHY IS A “QUALIFYING STATUTE” IMPORTANT?

In 2022, Oregon’s MSA payment was approximately \$84,400,000. To date, Oregon has received approximately \$1,871,400,000. The failure to have a “Qualifying Statute” would jeopardize such payments, and significant deviation from the model statute poses that risk.

WHAT ARE “PMs” OR “PARTICIPATING MANUFACTURERS?”

A Participating Manufacturer is one who agreed to the MSA and who was party to the original litigation. These are primarily large tobacco manufacturers, such as Philip Morris or RJ Reynolds, who sell among brands like Marlboro, Camel, and Newport. PM’s make up the vast majority of the current cigarette market share.

WHAT ARE “NPMs” OR “NON-PARTICIPATING MANUFACTURERS?”

Non-participating manufacturers - or NPMs - are not subject to the MSA, as most did not exist at the time of its adoption and importantly were not complicit in the actions that led to the litigation and MSA. NPMs sell a small fraction of the cigarettes sold today in Oregon. House Bill 2128B only impacts NPMs, not the large tobacco manufacturers who were the parties to litigation.

WHAT FINANCIAL OBLIGATION IS PLACED ON NPMs?

In order to ensure that NPMs did not have a competitive market advantage, and to provide for future potential litigation, NPMs pay a per cigarette fee into escrow accounts on an annual basis. This money is held in trust in the event the funds are necessary to pay out damages from litigation brought forth by the state. *No such lawsuit against an NPM has succeeded since the adoption of the MSA in 1998.*

WHAT IS THE PURPOSE OF THE ESCROW ACCOUNTS?

The purpose of the escrow account established under the model statute according to the US Court of Appeals, Ninth Circuit:

The money in the escrow accounts acts as a liability reserve. If the NPMs are successfully sued for cigarette-related harms, the money in the escrow accounts will pay the damage awards... *The payments can only be used to pay a judgment or settlement on a claim against the NPM,* up to the amount that the NPM would otherwise pay under the MSA.

Furthermore, when testifying in support of SB 792 (1999) a representative of the DOJ stated:

“The state is not taking the money... This is not money that is collected by the state. This is not money that goes to the state.”

WHAT HAPPENS TO THE MONEY IN ESCROW?

NPM money is held in escrow for a period of up to 25 years after which, if a litigation-related damage claim has not been awarded, is due back to the NPMs. Payments into the escrow accounts for NPMs continue once they hit the 25-year threshold, as the maximum required under the model statute is a 25-year balance.

WHAT DOES HB 2128B DO?

HB 2128B proposes to claim the entirety of NPM funds held in escrow for the state without any due process or the required litigation under the model/qualifying statute. In addition, HB 2128B also proposes to establish a new revenue raising fee - referred to in the bill as an 'equity assessment' - to fund the Oregon Health Plan going forward.

WHY IS HB 2128B UNFAIR?

The bill takes the amount currently in escrow accounts without due process or litigation. The bill represents a breach of a more than two-decade old understanding between NPMs and the model/conforming statute that was adopted in 46 states after approval of the MSA. Millions of dollars will be taken by the state despite **ZERO instances of legal wrongdoing by NPM manufacturers.**

DOES THE NEW "EQUITY ASSESSMENT" REQUIRE A 3/5 VOTE?

Some legal experts have suggested that HB 2128B clearly meets the definition of a revenue raising measure, as its provisions meet the two tests outlined in *Bobo v. Kulongoski* by bringing money into the treasury and possessing the essential features of a tax.

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