

DEPARTMENT OF FINANCE
DIVISION OF REVENUE
Statutory Authority: 29 Delaware Code, Section 6087(e) (29 Del.C. §6087(e))

PROPOSED

PUBLIC NOTICE

Tobacco Quarterly Escrow Installments and Certification Pursuant To 29 Del.C. Ch. 60(d)

The Division of Revenue proposes to adopt the following regulation concerning **Tobacco Quarterly Escrow Installments and Certification Pursuant To 29 Del.C. Ch. 60(d)**. Written comments or other written materials concerning the proposed regulation must be received by the Division of Revenue no later than 4:30 p.m., Tuesday, March 15, 2005, and should be addressed to Deputy Attorney General Drue Chichi, Esquire, c/o Department of Finance, Division of Revenue, 820 North French Street, Wilmington, DE 19899-8911 or sent by fax to (302) 577-8202 or Email to drue.chichi@state.de.us.

Authority

These regulations are issued pursuant to the authority given the Department of Finance for the State of Delaware (the Department) pursuant to Title 29 of the *Delaware Code* Relating To the Tobacco Settlement Act of 1999, Chapter 60D, Section 6087(e).

Quarterly Escrow Installments

The Department may require Non Participating Tobacco Product Manufacturers subject to the requirements of subsection 3(a)(2) to make escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made. The Department may require production of information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

Regulation

Quarterly Escrow Installments shall be required in the case of nonparticipating tobacco manufacturers who meet the following criteria:

- (a) No Previous Escrow Deposit. Nonparticipating tobacco manufacturer that have not previously established and funded a qualified escrow fund in Delaware;
- (b) No Escrow Deposit For More Than One Year. Nonparticipating tobacco manufacturer that have not made any escrow deposits for more than one year.
- (c) Untimely or Incomplete Deposits. Nonparticipating tobacco manufacturer that have failed to make a timely and complete escrow deposit for any prior calendar year;
- (d) Outstanding Judgments. Nonparticipating tobacco manufacturer that have failed to pay any judgment, including any civil penalty;
- (e) Large Sales Volume. Nonparticipating tobacco manufacturer that have more than 500,000 of their cigarettes sold in Delaware during a quarter; and
- (f) Other Reasonable Cause. In addition to the reasons specified above, the Attorney General may require quarterly escrow deposits from a Nonparticipating tobacco manufacturer if the Attorney General has reasonable cause to believe the nonparticipating manufacturer may not make its full required escrow deposit by April 15 of the year following the year in which the cigarette sales were made.

Deadline for Quarterly Escrow Deposits

Nonparticipating tobacco manufacturer who are required to make quarterly escrow deposits must do so no later than thirty (30) days after the end of the quarter in which the sales are made. For example, the deadline for making a quarterly escrow deposit for cigarette sales that occurred during the first quarter of the year (Jan-Mar) is April 30 of the same year.

Deadline for Submitting Quarterly Certification and Notice to Attorney General

Nonparticipating tobacco manufacturer who are required to make quarterly escrow deposits must provide the Attorney General with their quarterly certifications and official notification of the quarterly escrow deposit no later than ten (10) days after the deadline for which an escrow deposit is required. For example, the deadline for certifying and officially notifying the Attorney General of a quarterly escrow deposit for sales of cigarettes that occurred during the first quarter of the year (Jan-Mar) is May 10 of the same year.

Quarterly Periods Defined

For purposes of this subchapter, the calendar year shall be divided into the following quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

Notice to Nonparticipating Tobacco Manufacturers

Any nonparticipating tobacco manufacturer required to make quarterly escrow deposits and to certify its compliance with this rule shall be notified of those requirements by first class mail sent to its last known address.

Decertification

If the required quarterly escrow deposit is not timely made in full, or the required quarterly certification is not provided to the Attorney General, or the Attorney General does not receive timely official notice of the quarterly escrow deposit, the Nonparticipating tobacco manufacturer and its brand families may be decertified and removed from Delaware's Directory of Cigarette Brands and Brand Families Approved for Stamping and Sale in Delaware.

Patrick Carter
Director of Revenue

APPROVED AS TO FORM AND LEGAL SUFFICIENCY,

Drue Chichi, Esquire
Deputy Attorney General

8 DE Reg. 1075 (2/1/05)