

TOBACCO PRODUCTS TAX ACT (EXCERPT)
Act 327 of 1993

205.426f Refusal to list or the removal of a tobacco product manufacturer from the directory; exception; notice; deficiencies; demand for hearing; written order; appeal; definitions.

Sec. 6f.

(1) This section establishes and sets forth the process by which the department may remove a tobacco product manufacturer or any associated or affiliated brand families of a tobacco product manufacturer from the directory, or refuse to list a tobacco product manufacturer or any associated or affiliated brand families of a tobacco product manufacturer on the directory. This section does not apply to any tobacco product manufacturer that voluntarily requests removal from, or rescinds a request to become listed on, the directory for either itself or an associated or an affiliated brand family of the tobacco product manufacturer.

(2) Except as otherwise provided in this section, the department shall not include in the directory or retain a tobacco product manufacturer or any brand family of a tobacco product manufacturer in the directory, if any of the following apply:

(a) The tobacco product manufacturer has not performed any of its obligations under this act, including those obligations set forth in sections 6c and 6d, or 1999 PA 244, MCL 445.2051 to 445.2052.

(b) The tobacco product manufacturer or any of the tobacco product manufacturer's brand families have been removed from a list maintained by another state that is equivalent to, or otherwise serves the same purposes as, the directory, based on acts or omissions that would, if the acts or omissions occurred in this state, serve as a basis for removal from the directory.

(c) The tobacco product manufacturer, or any of its officers or directors, have, in any jurisdiction, pleaded guilty or nolo contendere to, or been found guilty of, a felony relating to the sale, distribution, or taxation of a tobacco product.

(d) The tobacco product manufacturer sold, transferred, or distributed a tobacco product to a wholesaler or unclassified acquirer that it knew or had reason to know was not licensed under this act or whose license was suspended or revoked under this act.

(3) If the department intends to remove from the directory, or not include on the directory, a tobacco product manufacturer or an associated or affiliated brand family of a tobacco product manufacturer, the department shall send a notice to the tobacco product manufacturer or, if applicable, its agent for service of process. The notice must include all of the following:

(a) The factual and legal deficiencies upon which the department's intended action rests.

(b) The action that the tobacco product manufacturer must take to cure those deficiencies.

(c) A statement that the tobacco product manufacturer has 15 calendar days, from the date of the notice, to cure those deficiencies and submit documentation of its attempt to cure.

(4) For good cause shown, as determined by the department in its discretion, the department may extend the 15 calendar day period under subsection (3) for a tobacco product manufacturer to cure its deficiencies up to an additional 15 calendar days.

(5) If the tobacco product manufacturer does not cure the deficiencies to the satisfaction of the department within the applicable period under subsections (3) and (4), the department shall issue a notice to the tobacco product manufacturer that, unless a demand for a hearing is made as provided in subsection (6), the department intends remove the tobacco product manufacturer or any of its brand families from, or not include the tobacco product manufacturer or any of its brand families on, the directory.

(6) Within 10 business days after the date of service of the notice issued under subsection (5), the tobacco product manufacturer may, by registered mail or personal service, file with the state treasurer a demand for a hearing before a representative of the department to determine whether the department's intention to remove from, or not include on, the directory the tobacco product manufacturer or any of its brand families is justified. If, within 10 business days after the date of service of the notice issued under subsection (5), the tobacco product manufacturer does not file with the state treasurer a demand for a hearing before the department as provided in this subsection, the department shall immediately remove from the directory, or refuse to include on the directory, the tobacco product manufacturer or any of its brand families at issue.

(7) Upon receipt of a demand for a hearing under subsection (6), the department shall hold the hearing within 15 business days. At the hearing, the tobacco product manufacturer is entitled to appear before the department, to be represented by counsel, and to present testimony and argument. The hearing is not a contested case proceeding and is not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(8) After the hearing under subsection (7), the department shall render its decision in writing within 10 business days of the hearing and, by order, shall declare 1 of the following:

(a) That the tobacco product manufacturer or any of the associated or affiliated brand families at issue be

removed from, or not included on, the directory.

(b) That the tobacco product manufacturer or any of the associated or affiliated brand families at issue be retained or included on the directory.

(9) If the department orders under subsection (8)(a) that the tobacco product manufacturer or its associated or affiliated brand families at issue should be removed from, or not included on, the directory and the tobacco product manufacturer does not appeal that order under subsection (10), the department shall immediately remove from the directory, or refuse to include on the directory, the tobacco product manufacturer or any of its brand families at issue.

(10) A tobacco product manufacturer aggrieved by the decision of the department under subsection (8) may appeal the department's order by filing an appeal to the Ingham County circuit court, designated as Michigan's master settlement court, within 30 days of the date the department mails the order to the aggrieved tobacco product manufacturer. If a proper appeal is taken in accordance with this section and applicable law, the department shall not remove a tobacco product manufacturer or any of its associated brand families from the directory until all appeal rights have been exhausted.

(11) As used in this section:

(a) "Cigarette" means that term as defined in 1999 PA 244, MCL 445.2051 to 445.2052.

(b) "Directory" means the lists established and described under sections 6c and 6d, separately or collectively, as applicable to the tobacco product manufacturer.

(c) "Master settlement agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, and incorporated into a consent decree and final judgment entered into on December 7, 1998, in *Kelley Ex Rel. Michigan v Philip Morris Incorporated, et al.*, Ingham County circuit court, docket no. 96-84281CZ.

(d) "Nonparticipating manufacturer" means a manufacturer of cigarettes that is not a participating manufacturer. Nonparticipating manufacturer also includes the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

(e) "Participating manufacturer" means that term as defined in the master settlement agreement.

(f) "Tobacco product manufacturer" means a participating manufacturer or a nonparticipating manufacturer, as applicable.

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