

NYS SETTLEMENT AGREEMENT GUIDANCE

November 23, 2015

DISCLAIMER NOTICE

The following NYS Tobacco Settlement Guidance (the “Guidance”) has been prepared and made available by the Office of the Attorney General of the State of New York (“OAG”) to help interested parties to better understanding aspects of the New York State Tobacco Settlement Agreement (the “NYS Settlement Agreement”), by and among the State of New York (the “State”) and the Participating Manufacturers listed in Appendix A hereto (collectively, the “Participating Manufacturers”) that became fully effective on October 16, 2015.

While OAG has posted this Guidance on the Tobacco Settlement web page of the OAG website (www.OAG.ny.gov), there should be no implication by its posting that there have been no other developments with respect to the Master Settlement Agreement, the Participating Manufacturers, the Non-Participating Manufacturers, the Tobacco Settlement Revenues (“TSRs”) or any other tobacco settlement negotiations or discussions involving the State at any time subsequent to its release date. Maintenance of this Guidance on the OAG website is not intended as a republication of the information contained therein on any date subsequent to its release date.

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Cautionary Note: *Investors of tobacco bonds and other interested parties are advised to rely only on figures/amounts stated in the NYS Settlement Agreement and not on press releases and other non-official sources of information relating to the NYS Settlement Agreement.*

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QUESTION: What current and future claims were resolved and settled by the NYS Settlement Agreement which became fully effective on October 16, 2015?

ANSWER: All of the outstanding claims between the State and the Participating Manufacturers relating to the Non-Participating Manufacturer Adjustment (the “NPM Adjustment”) for each of the years during the period 2004-14, inclusive, resulting, after the application of certain settlement credits (the “Settlement Credits”), in the release of 100% of all of the remaining moneys attributable to the State that were deposited by the Participating Manufacturers during this period to the Disputed Payment Account (the “DPA”), together with all accumulated earnings thereon to the date of release, and the distribution to the State and New York State counties, or their respective assignee Tobacco Asset Securitization Corporations (collectively the “NYS Tobacco Settlement Distributees”), of their allocable portion of such moneys. However, the NYS Tobacco Settlement Agreement also provides that 10% of the DPA distribution shall be deemed a credit against the Master Settlement Agreement Annual Payment (the “MSA Annual Payment”) due for 2015 and payable by April 15, 2016. In addition, all potential future NPM Adjustment claims have been settled according to the schedule set forth in the NYS Settlement Agreement.

QUESTION: The NYS Settlement Agreement provides for Settlement Credits that will be used to offset against (i) amounts to be released from the DPA relating to the NPM Adjustment, and (ii) all future MSA Annual Payments. How will the Settlement Credits be determined?

ANSWER: ***For the 2004-10 Period***, (A) the Original Participating Manufacturers (“OPMs”) will receive a discount (each a “Settlement Credit”) equal to a flat 10% of the allocable New York amount deposited by an OPM in the DPA for such period, and (B) the Subsequent Participating Manufacturers (“SPMs”) will receive Settlement Credits pursuant to an adjusted formula based on the OPM formula for such period. ***For the 2011-14 Period***, (A) the OPMs will receive Settlement Credits based on a formula relating to certain cigarettes for which the State did not collect New York Excise Tax during each year of such three year period, and (B) the SPMs will receive Settlement Credits pursuant to an adjusted formula based on the OPM formula for such period. ***For 2015 and thereafter***, (A) the OPMs will receive Settlement Credits tied to the total in-state sales volume of cigarettes that are manufactured on Native American reservations and sold tax-free from smoke shops on those reservations to New York consumers, and (B) the SPMs will receive Settlement Credits pursuant to an adjusted formula based on the OPM formula for such period. The Settlement Credits will be for a fixed amount per pack of cigarettes, but with a modifier based on overall volume of such cigarettes per year and an inflation adjustment. The annual volume information will be determined by a neutral, un-appealable third party agreed upon by the State and Participating Manufacturers.

QUESTION: As a result of the executed NYS Settlement Agreement, will NYS continue to have NPM adjustments in the future?

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ANSWER: No.

QUESTION: What is the total amount expected to be distributed to the NYS Tobacco Settlement Distributees” from the DPA?

ANSWER: The parties are awaiting Independent Auditor’s confirmation of amounts on deposit in the DPA. The OAG anticipates supplementing this NYS Settlement Agreement Guidance when the Independent Auditor’s confirmation of such amounts is completed.

QUESTION: When are the accumulated New York 2004-14 NPM Adjustment moneys expected to be disbursed from the DPA?

ANSWER: Disbursement of the NPM Adjustment moneys form the DPA is currently expected to occur no later than April 2016, but may occur sooner if PriceWaterhouseCoopers is able to verify the final dollar amounts that have been deposited into the DPA and the related earnings more quickly.

QUESTION: What are the current projections for the reduced amount of New York MSA Annual Payments to be received for 2015 (payable on April 15, 2016) and thereafter as a result of the Settlement Credits?

ANSWER: It is currently expected that in the first several years of implementation, the Settlement Credits will be in an annual amount not exceeding \$100 million (the most recent New York MSA Annual Payment (for 2014) was approximately \$775 million), and that the aggregate amount of Settlement Credits will decrease in future years, although the amount of the decrease is not currently quantifiable.

QUESTION: What was the basis for the Tribal Settlement Credit feature of the NYS Settlement Agreement and what are the current expectations for the level of such Settlement Credits in the future?

ANSWER: Effective May 2011 (after all injunctions were vacated), State tax law amendments relating to the State excise tax (including provision requiring (i) all cigarette packs sold in NYS to bear tax stamps, (ii) wholesalers to prepay taxes on the packs and (iii) Native American Nations to obtain coupons based upon probable demand for cigarettes by qualified tribal members) became effective and they remain in effect on the date hereof. The NYS Settlement Agreement assumes an initial \$90 million settlement credit and mandates a binding, independent third party study be prepared bi-annually to determine the future amount of Tribal Settlement Credits.

QUESTION: Regarding Section III B – “SET-Paid NPM Sales”, is it expected that on a going forward basis the State will be able to qualify for the safe harbor as outlined in Section III B 5?

ANSWER: Yes.

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QUESTION: What other benefits, if any, accrue to the NYS Tobacco Settlement Distributees as a result of the executed NYS Settlement Agreement?

ANSWER: Under the NYS Settlement Agreement, the Participating Manufacturers have unconditionally released New York from any other claims directly or indirectly based on, arising out of or in any way related to (i) the NPM Adjustment, and (ii) any contention by the Participating Manufacturers that New York's policy of not collecting New York Excise Tax on Tribal NPM Cigarettes sold to non-Tribal consumers in any way violates or breaches MSA requirements or standards, thereby insuring that beyond the Settlement Credits, the NYS Tobacco Settlement Distributees will not be at risk of losing any future MSA Annual Payments as the result of extended arbitration proceedings.