

The Master Settlement Agreement: Background and FAQs

Prepared by the Nebraska Attorney General's Office

The Master Settlement Agreement (“MSA”) was signed in November 1998, and is a settlement resulting from litigation between the participating tobacco product manufacturers and the states and territories that signed it. This agreement was the result of litigation brought by each settling state in its own state court against the four largest tobacco product manufacturers in the U.S. at that time. The lawsuits made multiple claims, but can be summarized as claims for the cigarette-related health care costs borne by the State as a result of deceptive trade practices in violation of state consumer protection and antitrust laws. Ultimately, forty-six states, five territories, and numerous tobacco product manufacturers signed the agreement. The four remaining states settled separately on similar terms.

The MSA places restrictions on the settling manufacturers’ advertising and promotional practices. These include prohibitions against cartoons, brand name merchandise, billboards and transit advertisements, and limitations on brand name sponsorships. For example, the MSA resulted in the elimination of Joe Camel’s use in advertisements, and the Marlboro Man’s image can no longer appear on billboards. The MSA also requires the settling manufacturers to make annual payments to the settling states in perpetuity. These payments are adjusted upwards each year for inflation, and are based on cigarettes sales throughout the United States, including the District of Columbia and Puerto Rico. The money is divided amongst the settling states based on fixed percentage shares, described below, that were agreed to at the time the MSA was signed. To date, Nebraska has received over \$650 million in MSA payments.

Q. Who makes payments pursuant to the MSA?

A. The settling manufacturers make annual payments, which are then distributed to the settling states.

Q. How are the MSA payments for the manufacturers determined?

A. Each of the manufacturers that has settled under the MSA makes payments based on its nationwide cigarette sales in the entire United States, including the District of Columbia and Puerto Rico.

Q. What is the total annual MSA payment, and how much does Nebraska receive?

A. The total annual MSA payment due from all the manufacturers is currently about \$6.8 billion, though certain ongoing disputes as to portions of the amount due reduce the amount actually paid by the manufacturers. Nebraska receives its percentage share of the total payments made under the agreement, referred to as its allocable share. The total amounts actually paid by the manufacturers and distributed to each settling state can be found here: <http://www.naag.org/>.

Q. How much money does Nebraska pay into the MSA each year?

A. The State of Nebraska does not “pay” any money into the MSA. The costs of the MSA payments are borne by the settling manufacturers who have agreed to make the yearly payments. Because the settling manufacturers make MSA payments based on their national cigarette sales, they build the cost of the payments into the sales they make in each of the states, the District of Columbia, and Puerto Rico.

Q. Is Nebraska’s share of the MSA payments based on cigarette sales made in Nebraska?

A. No. The settling manufacturers pay based on their nationwide cigarette sales. These payments are then distributed amongst the settling states based on each state’s allocable share, which was decided at the time the MSA was signed and was based on smoking-related health care costs, not cigarette sales or cigarette consumption rates.

Q. Do manufacturers that did not settle with the States and do not participate in the MSA pay any money into the settlement?

A. No. Tobacco product manufacturers that choose not to settle have no obligations under the MSA and do not make any payments under the settlement. Settling states enacted statutes requiring these manufacturers to place money into escrow based on their cigarette sales in that state. In Nebraska, manufacturers who choose not to settle place funds into escrow based on their cigarette sales in Nebraska. This money is held in escrow so that a pool of funds is available should the State of Nebraska successfully obtain a judgment against the manufacturer for certain types of claims, such as smoking-related health care costs. If, twenty-five years after the funds have been placed into escrow for cigarette sales made in the State of Nebraska, the manufacturer has not settled with Nebraska, and Nebraska has not obtained a judgment against the manufacturer, the funds are released from escrow to the manufacturer. While held in the escrow account, the funds remain the property of the manufacturer, and the manufacturer is entitled to receive any interest earned on such funds.

Q. Does the revenue collected from Nebraska’s cigarette excise tax get placed into a fund that is distributed nationwide?

A. No. All of the revenue generated from Nebraska’s cigarette excise tax is distributed into the funds set forth in Neb. Rev. Stat. § 77-2602, and is used within the State of Nebraska.

Q. Who pays the cigarette excise tax?

A. The cigarette excise tax is imposed on the ultimate consumer or user under Neb. Rev. Stat. § 77-2602.01. The cigarette tax is collected by the cigarette wholesaler. Cigarette packages have a Nebraska cigarette excise tax stamp placed on them by the cigarette wholesaler, who is deemed a stamping agent by law, to signify that the tax has been paid. Wholesalers, licensed by the Nebraska Department of Revenue, affix the tax stamp and prepay the cigarette excise tax.

The tax is then added into the cost of the product. Every package of cigarettes sold in Nebraska is required to bear the cigarette excise tax stamp.

Q. Who determines what payments are due from the settling manufacturers under the MSA?

A. Payments under the MSA are made pursuant to calculations issued by the MSA “Independent Auditor” (currently PricewaterhouseCoopers), and deposited with the MSA “Escrow Agent” (currently Citibank) for distribution to the settling states according to the percentages and formula set forth in the MSA.

Q. What role does the National Association of Attorneys General (“NAAG”) play in the MSA?

A. The MSA gives NAAG certain responsibilities, including providing coordination and facilitation for the implementation and enforcement of the MSA on behalf of the attorneys general of the settling states. This includes convening meetings and conferences, and supporting and coordinating the attorneys general of the settling states in carrying out their responsibilities under the MSA.

Q. Does NAAG collect the MSA payments from the manufacturers and then distribute the payments to the settling states?

A. No. NAAG does not collect the MSA payments from the manufacturers, nor does NAAG distribute the MSA payments to the settling states.

Q. What responsibilities does the Nebraska Attorney General’s Office have under the MSA?

A. The Nebraska Attorney General’s Office is responsible for enforcing the MSA’s public health restrictions against the settling manufacturers, as well as their payment responsibilities. The Attorney General’s Office is also responsible for enforcing other tobacco laws in the State of Nebraska, including the escrow requirements of non-settling manufacturers.

Q. Can any tobacco product manufacturer sell cigarettes in Nebraska?

A. No. In order to legally sell cigarettes in Nebraska, a tobacco product manufacturer must annually certify with the Nebraska Department of Revenue and the Nebraska Attorney General’s Office. The manufacturer must certify, among other things, that it is either an MSA settling manufacturer making payments to Nebraska under the agreement, or establish that it will place funds into escrow based on its cigarette sales within the state. The Nebraska Department of Revenue maintains a list of manufacturers and brands that have been certified for sale in Nebraska. The Nebraska Directory of Approved Tobacco Product Manufacturers and Brands can be located on the Nebraska Department of Revenue’s web site. Only tobacco product manufacturers and brands that are listed on the directory may be legally sold in Nebraska.