



HENRY McMASTER
ATTORNEY GENERAL

April 29, 2010

The Honorable Kent M. Williams
Senator, District No. 30
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Williams:

In a letter to this office you presented the following question:

Is a cigarette brand that is manufactured in another state and shipped to a bonded warehouse in South Carolina, where such cigarette brand is then shipped to other states for sale at retail, required to be listed on the South Carolina Tobacco Directory maintained by the Attorney General's office when the cigarette brand will not be sold at retail in South Carolina to consumers of this State?

S.C. Code Ann. §§ 11-47-10 et seq. is this State's "Tobacco Escrow Fund Act." Included in such provisions is Section 11-47-30 which requires that "[a]ny tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer, or similar intermediary or intermediaries)" to either "become a participating manufacturer" or "place into a qualified escrow fund" a sum based upon the "units sold"¹ within South Carolina of the tobacco products manufacturer in the previous year.²

¹The term "units sold" is defined by Section 11-47-20(j) as "...the number of individual cigarettes sold in the State by the applicable tobacco manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or 'roll-you-own' tobacco containers)...."

²Additionally, pursuant to S.C. Code Ann. § 12-21-660, "[e]very person engaged in the (continued...)"

Also enacted in order to deter violations and promote the enforcement of the Tobacco Escrow Fund Act were S.C. Code Ann. §§ 11-48-10 et seq. Section 11-48-30(A) states that

[e]ach tobacco product manufacturer whose cigarettes are sold in this State, whether directly or through a distributor, retailer, or similar intermediary or intermediaries shall execute and deliver on a form or in the manner prescribed by the Attorney General a certification to the Attorney General...that, as of the date of this certification, the tobacco product manufacturer either is a participating manufacturer or is in full compliance with Section 11-47-30....

Pursuant to subsection (B) of such provision,

[t]he Attorney General shall develop and make available for public inspection or publish on the office web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (A) and all brand families that are listed in the certifications....

Additionally, pursuant to subsection (C)(1),

[i]t is unlawful for any person to:

- (a) affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory if such a stamp is required by law; or
- (b) sell, offer, acquire, hold, own, possess, transport, import or cause to be imported, for sale in this State cigarettes of a tobacco product

²(...continued)

business of purchasing, selling or distributing...cigarettes...**at wholesale**...within the State...shall file with the Department of Revenue an application for a license permitting him to engage in such business.” Furthermore, pursuant to S.C. Code Ann. § 12-21-735, “[e]ach person or distributor of cigarettes taxable under this article, first receiving untaxed cigarettes for sale or distribution in this State is subject to...[the excise tax]...[A]ny person or distributor making shipments of cigarettes to retail locations **in and out of this State** shall apply to the department for a license which enables them to purchase cigarettes free of tax, and report and pay tax as provided in this section on sales of cigarettes sold to locations in this State.” I am referring to these provisions simply for the proposition that the sale of contraband cigarettes by a licensed distributor to a non-licensed entity constitutes a sale in this State and, therefore, is contraband.

manufacturer or brand family not included in the directory, or to import such cigarettes for personal consumption....(emphasis added).

In the situation you addressed, a cigarette brand is manufactured in another state, shipped to a bonded warehouse in South Carolina, and then shipped to other states for sale at retail. Consistent with the above-referenced statutory provisions, in the opinion of this office, such cigarette brand would not be required to be listed on the South Carolina Tobacco Directory maintained by this office when the cigarette brand is not sold at retail in South Carolina to consumers of this State. Pursuant to Section 11-48-30(A), “[e]ach tobacco product manufacturer whose cigarettes are sold in this State” must make certification to this office as set forth. Subsection (B) of such provision requires that this office “develop and make available for public inspection or publish on the office web site a directory” listing all tobacco product manufacturers that have provided certifications pursuant to subsection (A), again, which is limited to manufacturers “whose cigarettes are sold in this State.”

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General