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Tobacco Settlement Fact Sheet
September 21, 2020

- In November 1998, 46 state Attorneys General and five major tobacco companies, including Philip Morris and R.J. Reynolds, signed the "Master Settlement Agreement" (MSA). The MSA resolved lawsuits brought by the Attorneys General under consumer protection laws in order to further state policies regarding public health, including reducing youth smoking.

- The MSA requires these and other tobacco companies that later joined the agreement (together, the "Participating Manufacturers," or "PMs") to curtail certain marketing practices, like marketing to children, and pay the settling states approximately $10 billion each year for the indefinite future. Each April, Vermont receives its share of this annual payment (its "MSA Payment"). For example, Vermont's 2020 MSA payment was approximately $24 million.

- A state's MSA payment can be reduced by a certain percentage if, for the given calendar year, an independent economic consultant finds that the MSA was a "significant factor" in causing the PMs to lose market share to tobacco companies that were not signatories to the MSA ("Nonparticipating Manufacturers" or "NPMs"). This reduction is called the "NPM Adjustment."

- A state can avoid the NPM Adjustment if it proves, in arbitration, that it "diligently enforced" certain tobacco laws against NPMs during the calendar year in question.
  - If a state wins that arbitration, it receives the disputed NPM Adjustment amount. (For VT, the disputed amounts are approximately $3-$5M per calendar year.)
  - If a state loses the arbitration, it loses at least the amount of the NPM Adjustment (appx. $3-5M, for VT) and up to almost three-quarters of an entire MSA payment for that year, depending on how many other states lose their arbitrations.

- In 2018, Vermont and other arbitrating states settled their respective "diligent enforcement" disputes with the PMs for calendar years 2004-2017. Under the settlement:
  - For 2004-'12, Vermont received 54% of disputed NPM Adjustment amounts;
  - For 2013-'14, Vermont received 66% of disputed NPM Adjustment amounts;
  - For 2015-'17, Vermont received 75% of disputed NPM Adjustment amounts.

- As part of this 2018 settlement, Vermont, other states, and the PMs agreed that if certain other legal conditions were met (relating to the application of federal tax laws to settlement proceeds), then (1) the 2018-‘19 diligent enforcement disputes would be deemed settled on the same terms as 2015-‘17 (with 75% of disputed NPM Adjustment amounts going to the states) and (2) states would have the election to settle 2020-’22 on these same terms.

- In March 2020, these conditions were met. As a result, 2018-‘19 were automatically deemed settled and Vermont had the option to settle 2020-‘22, as it had negotiated for. Today, the Attorney General announced the decision to elect settlement for those years.

- The total amount of today’s announced settlement is approximately $10.5 million, structured to be received incrementally between now and 2023.

Diligent Enforcement Activities:

- Every year, Vermont conducts audits of tobacco distributors to ensure that only cigarettes and roll-your-own tobacco listed on Vermont’s “legal for sale” list is sold in Vermont. In order to be listed on Vermont’s “legal for sale” list, products must be certified as “fire safe;”
- In addition, we check to ensure that all NPM brands are properly accounted for;
- We work with the Department of Taxes to ensure that all required escrow payments are collected and made to the State of Vermont for any NPM’s;
- In addition, we review all certifications that come to the State of Vermont for all tobacco products (both PM’s and NPM’s); and finally
- We update our “legal for sale” list based on the certification process.