

## PACT ACT NOTICE

### Electronic Nicotine Delivery Systems regulated as “Cigarettes” under the PACT ACT beginning March 27, 2021 and new PACT ACT Reporting Forms

Issued: April 1<sup>st</sup>, 2021

The Prevent All Cigarette Trafficking (“PACT”) Act, 15 U.S.C. §375, *et seq.*, requires, among other things, that any *person* (as defined in the PACT Act) who sells, transfers, or ships “cigarettes” or “smokeless tobacco” in interstate commerce (in which those cigarettes or smokeless tobacco are shipped into a state taxing the sale or use of those tobacco products) for profit to: (i) register with the Attorney General of the United States; (ii) register with the Tobacco Tax Administrator of the state into which the shipment of cigarettes or smokeless tobacco is made, and; (iii) file reports, no later than the 10<sup>th</sup> day of each month with the Tobacco Tax Administrator of the state into which such shipment is made. The Tobacco Tax Administrator for the State of Michigan is the Michigan Department of Treasury (“Treasury”).

The reports required to be filed with Treasury must include, at a minimum, a memorandum or copy of the invoice covering each shipment of cigarettes or smokeless tobacco into the state made during the previous calendar month. The memorandum or invoice must include the following: (i) name and address of the recipient; (ii) the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller (as defined in the PACT Act); and (iii) the brand, quantity, weight or volume, and price of the cigarettes or smokeless tobacco shipped into the state.

With the enactment of the federal *Preventing Online Sales of E-cigarettes to Children Act* (“POSECA”), the PACT ACT’s definition of a “cigarette” is amended (**effective March 27, 2021**) to include “an electronic nicotine delivery system.” As amended by the POSECA, a “cigarette” under the PACT ACT means any of the following:

- (a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- (b) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in (a) above;
- (c) Roll-your-own tobacco; and
- (d) An electronic nicotine delivery system.

Under the PACT Act, as amended by the POSECA, an electronic nicotine delivery system means an electronic smoking device that, through an aerosolized solution, delivers nicotine, flavor, or any other substance to the user inhaling from the device and includes (among other things) an e-cigarette, e-hookah, e-cigar, and a vape pen.

The PACT Act defines “smokeless tobacco” as any finely cut, ground, powdered, or leaf tobacco, or other product containing tobacco, that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.

Compliance with the PACT Act is a requirement for continued listing on the list (directory) of approved participating and nonparticipating tobacco product manufacturers located on the Treasury’s tobacco tax website. All tobacco product manufacturers and out-of-state distributors and unclassified acquirers that sell, transfer, or ship cigarettes or smokeless tobacco for profit into the State of Michigan must register with the Treasury’s Tobacco Tax Enforcement Unit and file monthly PACT Act reports.

**Registration:** You can obtain the federal PACT ACT registration form (ATF Form 5070.1) at [www.atf.gov](http://www.atf.gov). Please submit a copy of your federal registration form to Treasury’s Tobacco Tax Enforcement Unit at: P.O. Box 30140, Lansing, MI 48909.

**Reporting:** You can obtain the Michigan PACT ACT reporting forms for each type of PACT ACT “cigarette” (e.g., Form 4855, Form 5746, and Form 5747) and for “smokeless tobacco” (Form 4856) at [www.michigan.gov/tobaccotaxes](http://www.michigan.gov/tobaccotaxes). Please submit your completed reports **no later than the 10<sup>th</sup> day** of each calendar month to Treasury’s Tobacco Enforcement Unit at: P.O. Box 30140, Lansing, MI 48909.

Please visit our website for additional information regarding the PACT ACT at [www.michigan.gov/tobaccotaxes](http://www.michigan.gov/tobaccotaxes) or contact Treasury’s Tobacco Tax Enforcement Unit at 517-636-0680 if you have any questions.