

MSA TOBACCO PAYMENTS AND THE NON-PARTICIPATING MANUFACTURER (NPM) SETTLEMENT

(CONSENSUS FORECASTING GROUP)

J. MICHAEL JONES, PHD

SEPTEMBER 25, 2023

Office of State Budget Director

The Master Settlement Agreement

2

- The Master Settlement Agreement (MSA) resolved litigation brought by the States vs. major tobacco companies for costs incurred in treating smoking-related illnesses
- 52 States and Territories are collectively the “Settling States”
- The original, major tobacco companies that were sued are the “Original Participating Manufacturers” (OPMs)
- The tobacco companies that subsequently joined in the settlement are the “Subsequent Participating Manufacturers” (SPMs)

The Master Settlement Agreement

3

- OPMs and SPMs are subject to significant restrictions on advertising and marketing of tobacco products
- OPMs and SPMs have made and continue to make significant settlement payments to the Settling States
- The Commonwealth of Kentucky received \$118.3 million in FY23 and \$2.67 billion in MSA payments in total

The Master Settlement Agreement

4

Three potential adjustments to the payments:

Inflation adjustment

- Greater of CPI growth or 3%

Volume adjustment

- Reductions relative to 1997 base cigarette shipments
- Volume adjustment reduced if Aggregate Operating Income exceeds inflation adjusted 1996 levels

Non-participating manufacturers (NPM) adjustment

What is the NPM Adjustment?

5

- Tobacco companies that don't join the MSA are "Non-Participating Manufacturers" (NPMs) and are free from MSA's marketing restrictions and the settlement payment obligations
- To prevent the NPMs from having a significant advantage in the marketplace, the Settling States each passed a "Qualifying Statute" requiring NPMs to make escrow payments for the cigarettes sold in each State
- The states are required to "diligently enforce" the provisions of the MSA, though "diligent enforcement" is not defined
- The reduction in payments is punitive – payments are reduced by triple the net market share loss above 2%

NPM Adjustment Settlement

6

- The Commonwealth entered into a settlement agreement with the OPMs and the SPMs in June, 2014
- Settled the issue of the 2003-2012 NPM Adjustments and 2013-2022 have been settled subsequently
- Eliminated the budgetary impact of the adverse 2003 NPM Adjustment decision
- Reduces the volatility in future annual MSA payments – OPMs agree to withhold significantly smaller portion of potential NPM Adjustment
- Thirty-eight States and Territories have entered into settlements of the NPM Adjustment issue

Revenue Estimates

7

Preliminary Estimates

Fiscal Year 2024	\$102.6 Million
Fiscal Year 2025	\$ 97.3 Million
Fiscal Year 2026	\$ 92.5 Million