



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

LINDA L. KELLY  
ATTORNEY GENERAL

September 21, 2012

Tobacco Enforcement Section  
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Gerald P. Kupris, Esquire  
President / CEO  
Pennsylvania Distributors Association  
800 North 3<sup>rd</sup> Street, Suite 505  
Harrisburg, PA 17102

Re: Retail RYO Machines

Dear Mr. Kupris:

This will respond to your August 23, 2012 e-mail in which you requested this Office's views regarding the legal status of retail RYO rolling machines.

As you are aware, the enactment by the federal government in July of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act ("MAP-21") clarified that a person who for commercial purposes makes available a cigarette-making machine<sup>1</sup> is a tobacco product manufacturer under federal law. Although this Office is not in a position to explain fully what this entails as a matter of federal law, the Alcohol and Tobacco Tax and Trade Bureau (TTB) has announced that manufacturers of tobacco products must comply with numerous statutory and regulatory requirements, including, but not limited to:

- Obtaining a permit before engaging in business;
- Obtaining a bond and paying special (occupational) tax;
- Complying with recordkeeping, reporting, and inventory requirements; and
- Filing returns and paying the applicable taxes.

The TTB's announcement warns that "it is against the law to manufacture tobacco products without a permit."<sup>2</sup> The TTB has also posted a webpage that has answers to Frequently Asked

<sup>1</sup> For brevity, we refer hereafter to such a person as an "operator."

<sup>2</sup> The TTB's announcement can be found at

[http://www.ttb.gov/announcements/ttb\\_announcement\\_ryo\\_on\\_6th\\_circuit\\_court\\_decision.pdf](http://www.ttb.gov/announcements/ttb_announcement_ryo_on_6th_circuit_court_decision.pdf).

Gerald P. Kupris, Esquire

September 21, 2012

Page 2

Questions about “Roll-Your-Own Cigarette Machines” and other machines for making tobacco products. See [http://www.ttb.gov/faqs/tobacco\\_ryo\\_machine.shtml](http://www.ttb.gov/faqs/tobacco_ryo_machine.shtml).

Operators of retail RYO machines also qualify as tobacco product manufacturers for purposes of Pennsylvania state law. State rules governing the operations of tobacco product manufacturers as they relate to retail RYO machines include the following:

1. A tobacco product manufacturer that sells cigarettes within the Commonwealth must either join the Master Settlement Agreement (“MSA”) as a participating manufacturer or place required amounts into a qualified escrow fund as a nonparticipating manufacturer. See 35 P.S. §5674 (Tobacco Settlement Agreement Act.)
2. A “nonparticipating” tobacco product manufacturer whose cigarettes are sold in the Commonwealth must be registered to do business in the Commonwealth or appoint a resident agent for service of process. See 35 P.S. §5702.305. (Tobacco Product Manufacturer Directory Act.)
3. A tobacco product manufacturer that sells cigarettes within the Commonwealth must have its brands included on the Attorney General’s Tobacco Directory of brands approved for sale.<sup>3</sup> If a cigarette brand is not listed on the Directory, then those cigarettes are contraband and subject to seizure and forfeiture.” See 35 P.S. §5702.307(b).
4. A tobacco product manufacturer that sells cigarettes within the Commonwealth must have its cigarettes tested and qualified as fire-safe as specified in the Cigarette Fire Safety & Firefighter Protection Act. See 35 P.S. §1254.4.
5. A retail RYO machine operator must be licensed as a cigarette stamping agent if it intends to sell its manufactured cigarettes directly to the consumer. See 72 P.S. §204-A. (Fiscal Code, Article II-A, Cigarette Sales and Licensing.) Such an operator must also have a cigarette retail license. See 72 P.S. §206-A.

I encourage you to share this letter with your membership. A copy of the letter will be posted on our website, <http://www.attorneygeneral.gov/consumers.aspx?id=272>.

Sincerely yours,



Joel M. Ressler  
Chief Deputy Attorney General  
Chief, Tobacco Enforcement Section

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<sup>3</sup> The Directory is located at [http://www.attorneygeneral.gov/firesafe\\_brands](http://www.attorneygeneral.gov/firesafe_brands).