



## CIGARETTE COMPANY MSA PAYMENT WITHHOLDINGS – THE NPM ADJUSTMENT & HOW STATES CAN FIGHT BACK –

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Some of the cigarette companies required to make annual payments to the states by the Master Settlement Agreement (MSA) have withheld a portion of their April payments from 2006 through 2010, claiming they were entitled to a downward Non-Participating Manufacturers (NPM) adjustment to each of those payments because they lost market share to the NPMs in prior years (2003 to 2007, respectively).<sup>1</sup> These withholdings reduced the actual MSA payments received by each of the states by about \$780 million or 12 percent in 2006 and by about \$700 million or 10 percent in 2007. Since then, the withholdings have been somewhat smaller, totaling approximately \$597 million in 2010 (see payment details in the table, below).<sup>2</sup> Additional withholdings are possible in future years. To better understand the situation, it is important to note the following.

- The MSA states have already begun legal proceedings to get all the withheld funds back, with interest.
- The NPM adjustment withholdings in future years should be smaller than the initial amounts withheld in 2006 and 2007, and should not be not significantly different from the withholdings in 2010 because the NPM's share of the United States cigarette market has declined from its peak and more or less stabilized at lower levels.

At the same time, the cigarette companies are still in the driver's seat, freely able to disrupt state budgets by withholding portions of their MSA payments, with the states' only direct recourse to go to arbitration to try to get their money back. To protect against any serious future budget disruptions relating to the cigarette companies' MSA payments, however, the states could respond to the ongoing MSA payment reductions by increasing their tobacco tax rates, or could pass legislation directing the state revenue department to increase all state tobacco tax rates whenever the state's total tobacco settlement and tobacco tax revenues fall below certain stated amounts or significantly below the prior year's level.<sup>3</sup>

Each state could also pass legislation to prohibit in the state the sale of the brands of any cigarette company that fails to make its MSA payments in breach of the MSA even after being notified of its obligation to do so. This approach would not block legitimate payment reductions or withholdings allowed by the MSA, but it would at least create a strong disincentive against the future possibility of any MSA participating companies refusing to make required payments in clear violation of the MSA. Such legislation could be structured to parallel the "complementary legislation" many states have passed, with the support of the MSA cigarette companies, to block the sales of the cigarette brands of Non-Participating Manufacturers that have failed to make their

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<sup>1</sup> The claimed NPM adjustment for 2003 was not taken until 2006 because of preliminary procedures relating to data collection and analysis and third-party findings required by the MSA and related agreements between the MSA states and cigarette companies. Those required procedures and findings are described below.

<sup>2</sup> In most cases, the withholding MSA cigarette companies have paid the claimed NPM adjustment amounts into a special MSA "Disputed Payments Account," where the withheld amounts are held in escrow, accruing interest until the dispute over the claimed NPM adjustments is resolved and payment is made to the prevailing party. But any withheld amounts not paid into the Disputed Payment Account would still be owed to the states with interest if the dispute were resolved in their favor. So far, Philip Morris has not withheld any amount pursuant to the claimed NPM adjustments, but has retained its right to adjustments to future payments if it is determined by the courts or through final arbitration that one or more states did not diligently enforce their model statute in 2003 and/or subsequent years and Philip Morris has a clear right to corresponding payment adjustments.

<sup>3</sup> On the other hand, it would be short sighted for a state to try to protect their MSA revenues by securitizing its settlement payments (i.e., selling off its future MSA payments to investors for a much smaller lump-sum payment now). Securitizing has always been a bad deal for the states, providing only pennies for each dollar of future payments sold – and it will be an even worse deal while this NPM adjustment dispute remains unresolved. In addition, a securitizing state would still be obligated to diligently protect and maintain the MSA payments that they had sold, in order to protect the buyers of the revenues and the investors that purchase the subsequent tobacco settlement bonds. For more on the many state disadvantages from securitizing, see the Campaign factsheets at [http://www.tobaccofreekids.org/facts\\_issues/fact\\_sheets/policies/settlements\\_us\\_state/payments/](http://www.tobaccofreekids.org/facts_issues/fact_sheets/policies/settlements_us_state/payments/).

payments into state-controlled escrow accounts, as required by the “model statutes,” which each state has passed pursuant to the MSA.

### **What Is the NPM Adjustment?**

Under the MSA, participating cigarette companies payments to a state may be reduced by a percentage roughly equal to three times their market share loss to those cigarette companies that have not signed onto the MSA (the Non-Participating Manufacturers or NPMs) whenever it is determined that: 1) from 1997 to the year at issue the MSA companies, as a whole, have lost market share to NPMs; 2) the MSA was a “significant factor” in that market share loss; and 3) the state did not “diligently enforce” its MSA model statute (which each state has passed to require NPMs to make MSA-like payments each year into state escrow accounts) in the given year. The model statute was designed to reduce any competitive disadvantage the cigarette companies signing the MSA might have in relation to NPMs and to provide funds to satisfy any lawsuits by the states against the NPMs similar to those brought against the major cigarette companies that underlie the MSA.

The downward NPM adjustment percentage totals three times the participating companies’ market share loss since 1997 minus two percent. So if the major companies lost 5 percent of the market to NPMs from 1997 to the subject year and it is determined that the MSA was “a significant factor” in that loss, then the maximum possible reduction to the MSA cigarette companies total payments owed for that year would be about 9 percent (three times 5%-2%).<sup>4</sup>

Pursuant to the MSA, the Independent Auditor that oversees the MSA payments determines whether the MSA cigarette companies lost market share to the NPMs from 1997 to the subject year and what the extent of that loss was. Then, when there is such a loss, an independent economic research firm appointed through MSA procedures (the Brattle Group,) makes the final determination, upon request of the companies, as to whether the MSA was a “significant factor” in that market share loss. Given such a finding, the MSA cigarette companies can then take a retroactive NPM adjustment to reduce their next MSA payments to those states that the companies believe might not have diligently enforced their model statute laws against the NPMs in the subject year. The determination as to whether the MSA cigarette companies’ non-diligent-enforcement claims against each state are valid and whether they are entitled to the NPM adjustment is made through arbitration.

If some states are found to have “diligently enforced,” but others are found not to have done so, the entire nationwide NPM adjustment amount would be taken out of the MSA payments of just those states found not to have diligently enforced (with the diligently enforcing states getting paid any amounts withheld from their past payments, plus interest). Consequently, the stakes are quite high for any state with a poor record of enforcing its model statute. For any given year subject to a valid NPM adjustment, however, no state can be charged more than its entire MSA payment for that year, and there is no carry-over of any unpaid NPM adjustment amount from one year to the next. In other words, the total NPM adjustment amount actually awarded the MSA cigarette companies for any given year cannot exceed the total settlement payments paid to the states found to have not diligently enforced during that year.

### **How Have the Cigarette Companies Applied the NPM Adjustment to their MSA Payments Since 1996?**

Following procedures set forth in the MSA, prior to April 2006 the MSA Independent Auditor determined that the MSA cigarette companies lost 6.25 percent of market share to NPMs from 1997 to 2003 and then the Brattle Group found that the MSA was a “significant factor” in that market share loss.<sup>5</sup> Those findings

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<sup>4</sup> The NPM adjustment works only to reduce MSA payments to the states. If the MSA companies somehow increased their total market share (compared to the 1997 base year), the NPM adjustment would not come into play to increase payments to the states.

<sup>5</sup> The Brattle Group has been applying a very low threshold for determining whether or not the MSA was “a significant factor” – holding that the existence of other much more powerful factors in the MSA cigarette companies’ market share losses to NPMs is not enough to make the MSA a “not significant” factor. For example, it is clear that the major reason the main MSA cigarette companies lost market share to the NPMs since 1997 was because in 1998 they raised their cigarette prices by far more than was needed to cover their MSA related costs, thereby making it easy for NPMs to compete on a price basis and take away market share. [See the Campaign for Tobacco-Free Kids factsheet, *U.S. Cigarette Companies’ Settlement-Related Price Hikes Were Excessive*, <http://www.tobaccofreekids.org/research/factsheets/pdf/0071.pdf>.]

supported a one-time downward NPM adjustment of 18.74 percent to the MSA cigarette companies annual payment to the states in 2003 – but only if the states had failed to “diligently enforce” their model statutes. Philip Morris, the largest MSA cigarette company, did not apply this reduction to its 2006 MSA payments, waiting, instead, until there is a final determination on the diligent enforcement issue. But R.J. Reynolds, Lorillard, and most of the other MSA cigarette companies did apply the 2003-based NPM adjustment to the amounts they paid the states in 2006 – even though there had not yet been any finding that any state in 2003 failed to diligently enforce its model statute. As a result, total MSA payments to the states declined by about \$814 million in 2006, with each MSA state having its settlement payments reduced by roughly 12 percent. So far, the exact same process has been followed by the companies in each subsequent year, but with smaller NPM adjustment percentages and smaller total dollar amounts withheld.

### **What Have the States Done to Try to Get the Withheld MSA Payments Back?**

Because R.J. Reynolds, Lorillard, and the other cigarette companies failed to make their complete payments to the states in April 2006, the vast majority of the MSA states filed lawsuits to obtain a declaratory judgment that they have diligently enforced their model statutes so that they can get back the withheld funds, plus interest. But the cigarette companies opposed those motions, claiming that the matter must be resolved, pursuant to the MSA, by arbitration rather than through the courts. After considerable legal wrangling, it has now been determined that the matter must be settled through arbitration, and all the MSA states are now involved in a consolidated nationwide arbitration in relation to the withholdings made in 2006. The third of the three arbitrators required to hear that case was chosen only in mid-2010; and it is not yet clear how long it will take for the diligent enforcement question to be answered relating to each state involved in the arbitration. Some significant decisions by the arbitrators are possible before the 2011 MSA payments are due, but whether those decisions will have any impact on the 2011 payments is not clear. It is also possible (but not predictable) that the MSA states and cigarette companies might enter into some kind of negotiated settlement before the legal proceedings have run their course.

### **Will the States Get the Money Back? Have They Diligently Enforced Their Model Statutes?**

A key factor in determining whether a state has diligently enforced its model statute is whether the state attorney general or other state enforcement officials have brought any lawsuits or taken any other actions against NPMs that have failed to comply with the state’s model statute and make all related payments into state escrow accounts. While state efforts in this regard vary (as do their available enforcement resources), it is clear that many states have regularly taken action to identify and enforce against noncomplying NPMs.

Another factor is whether a state has passed new laws, supported by the MSA cigarette companies, to enforce NPM compliance with the states’ model statutes, close loopholes in the model statutes, or otherwise clarify or improve the workings of the model statute or stop violations by NPMs. In that regard, each of the MSA states have gone beyond what is required by the MSA and passed all or some of these different laws that strengthen and improve the model statutes and facilitate their enforcement (see table, below).

Another factor is the extent to which a state has collected payments into escrow from NPMs for any given year that equals the total amount of NPM payments into escrow that should have been received relating to that year given the model statute’s formula for calculating NPM payments based on the total number of NPM cigarettes sold in the state in that year.

Although the MSA cigarette companies have extensive information regarding state enforcement efforts relating to their model statutes and NPMs – and there is no question that at least some of the states have been diligently enforcing their model statutes both before and after 2003 – R.J. Reynolds, Lorillard, and the rest of the companies made their NPM adjustment withholdings from 2006 through 2010 (based on 2003 to 2007) without any references to which states they claim have or have not been diligently enforcing their model statutes.

This problem of unsupported cigarette company allegations of non-diligent enforcement has only increased since the cigarette companies first began asserting their NPM adjustment claims and making related withholdings in 2006. Faced with those withholdings in 2006, the states have certainly increased their efforts to ensure (and document) that they are diligently enforcing their laws relating to NPM payments. Accordingly, the likelihood that the cigarette companies have any basis for claiming any downward NPM adjustment to their

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MSA payments based on any payment years from 2006 onward has likely decreased substantially, if not disappeared, in relation to many states. Yet the companies have withheld funds in 2009 and 2010, based on 2006 and 2007, without identifying which states they claim have not diligently enforced (and without identifying those states that have).

While the procedures and rights created by the MSA are complicated and often subject to different interpretations, it appears that the MSA calls for the withholding companies to reveal which states they claim have not diligently enforced and, consequently, are subject to the NPM adjustment.<sup>6</sup> If the states or the MSA Independent Auditor have asked the withholding companies to do that, any subsequent refusal by the withholding cigarette companies to provide this information might constitute a violation of the MSA procedures. So far, however, no state has brought any legal action against any of the withholding companies to assert any such a violation of the MSA process. Nor has any state taken any other action to try to require the cigarette companies to administer and enforce the MSA in good faith and apply a reasonable standard in their determinations of whether the state's enforcement has been "diligent" enough to keep them from any future withholdings based on NPM adjustment claims.

### **Are Additional NPM Adjustments to State MSA Payments Likely in Future Years?**

As noted above, the cigarette companies' actions to claim an NPM adjustment in 2006 (based on 2003) should have prompted the states to ramp up their enforcement efforts, and document them, in order to eliminate any possible justification for NPM adjustment withholdings based on any claims of non-diligent enforcement from that point (2006) on. Yet the cigarette companies have continued to withhold payments in 2009 and 2010 (based on 2006 and 2007). Apparently, the MSA cigarette companies (other than Philip Morris) will continue to withhold part of their payments to the states in future years – regardless of how diligently the states enforce their model statutes – so long as the Brattle Group finds that the companies lost market share to the NPMs in the base year and that the MSA was "a significant factor" in that market share loss, at least until the diligent enforcement issue is resolved through arbitration or the cigarette companies and the states enter into some kind of related settlement agreement.

Once any specific states have been found by the courts or through arbitration to have diligently enforced in 2003 or a later year, they should not be subject to any NPM adjustments relating to any subsequent years absent clear evidence that their enforcement efforts had significantly weakened. But it is not clear whether or not any such final findings will be made before the payments that are due by next April 15. Moreover, it is not yet clear whether the cigarette companies will continue to make withholdings against any such state, regardless of a finding that it has diligently enforced, making the state prove its diligent enforcement again for each subsequent year, as well.

### **Key NPM Adjustment Information for Each State**

The following table provides estimates of how much the cigarette companies reduced their payments to the states from 2006 to 2010 because of their NPM adjustment claims. It also shows which states have passed the "complementary legislation" (or tax stamping prohibition) designed to increase compliance with the model statute and facilitate enforcement, and which have passed the various other types of legislation that have been promoted by the MSA cigarette companies to strengthen the state model statutes and place related requirements on NPMs. The passage of these new state laws relating to NPMs – not required by the MSA –

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<sup>6</sup> Under section XI.(d) of the MSA, prior to the payment due date each year, the Independent Auditor provides the participating cigarette companies with calculations of how much they owe in total and to each state, showing all applicable adjustments, offsets and the like; and the companies must notify the Independent Auditor and the states of anything in the calculations that they dispute, including the reasons and basis for the dispute. That suggests that the companies were obligated to explain why they disputed the Independent Auditor payment calculations for what was owed in 2006 onward (because they were asserting a retroactive NPM adjustment) both in general and on a state-specific basis – providing information as to why they thought that each state had not been diligently enforcing its model statute (and indicating that they had no dispute with those states for which they had no evidence of a failure to diligently enforce). Moreover, unless the cigarette companies have a good faith belief that enough states have failed to diligently enforce in a given year to pay off the entire NPM adjustment amount for that year (i.e., those states' total MSA payments for that year equal or exceed the calculated maximum nationwide NPM adjustment amount), it would be improper of them to claim the right to withhold the entire NPM adjustment amount for that year.

provide evidence that the states have been implementing extraordinary measures to support, complement and expand their enforcement of their NPM model statutes.

States	Estimated NPM Adjustment Withholding Amounts (millions)					Passed NPM Tax Stamping Prohibition	Passed NPM Allocable Share Rules	Passed NPM Quarterly Payments Rules	Passed New NPM Reporting Rules
	2006	2007	2008	2009	2010				
All MSA	\$813.7	\$699.9	\$536.0	\$522.9	\$597.2				
Alabama	\$13.2	\$11.4	\$8.7	\$8.5	\$9.7	2003	2003	2003	2003
Alaska	\$2.8	\$2.4	\$1.8	\$1.8	\$2.0	2003	2004	2003	2003
Arizona	\$12.0	\$10.4	\$7.9	\$7.7	\$8.8	2003	2004	2003	2003
Arkansas	\$6.7	\$5.9	\$4.4	\$4.3	\$4.9	2003	2005	2003	2003
California	\$103.9	\$90.4	\$68.4	\$66.7	\$76.2	2003	2003	2003	2003
Colorado	\$11.2	\$9.7	\$7.3	\$7.2	\$8.2	2003	2004	2003	2003
Connecticut	\$15.1	\$13.1	\$10.0	\$9.7	\$11.1	2002	2004	2004	2002
Delaware	\$3.2	\$2.8	\$2.1	\$2.1	\$2.4	2003	2004	2003	2003
DC	\$4.9	\$4.3	\$3.3	\$3.2	\$3.6	2005	2005	2005	2005
Florida	Not in MSA								
Georgia	\$20.0	\$17.4	\$13.2	\$12.8	\$14.7	2003	2004	2003	2003
Hawaii	\$4.9	\$4.3	\$3.2	\$3.1	\$3.6	2003	2003		2003
Idaho	\$3.0	\$2.6	\$1.9	\$1.9	\$2.2	2003	2003	2002	2003
Illinois	\$37.9	\$33.0	\$24.9	\$24.3	\$27.8	2003	2003	2003	2003
Indiana	\$16.6	\$14.4	\$10.9	\$10.7	\$12.2	2003	2003	2003	2003
Iowa	\$7.1	\$6.2	\$4.7	\$4.5	\$5.2	2003	2003	2003	2003
Kansas	\$6.8	\$5.9	\$4.5	\$4.4	\$5.0	2002	2005	2002	2002
Kentucky	\$14.3	\$12.5	\$9.4	\$9.2	\$10.5	2003	2004	2004	2003
Louisiana	\$18.4	\$16.0	\$12.1	\$11.8	\$13.5	2002	2003	2004	2002
Maine	\$6.3	\$5.4	\$4.1	\$4.0	\$4.6	2003	2003	2003	2003
Maryland	\$18.4	\$16.0	\$12.1	\$11.8	\$13.5	2003	2004		2003
Massachusetts	\$32.9	\$28.6	\$21.6	\$21.1	\$24.1	2004	2004	2004	2004
Michigan	\$35.4	\$30.8	\$23.3	\$22.8	\$26.0		2004		2002
Minnesota	Not in MSA								
Mississippi	Not in MSA								
Missouri	\$18.5	\$16.1	\$12.2	\$11.9	\$13.6				
Montana	\$3.5	\$3.0	\$2.3	\$2.2	\$2.5	2003	2003	2003	2003
Nebraska	\$4.8	\$4.2	\$3.2	\$3.1	\$3.6	2002	2004	2003	2002
Nevada	\$5.0	\$4.3	\$3.3	\$3.2	\$3.6	2005	2005	2005	2005
New Hampshire	\$5.4	\$4.7	\$3.6	\$3.5	\$4.0	2003	2004	2003	2003
New Jersey	\$31.5	\$27.4	\$20.7	\$20.2	\$23.1	2003		2003	2003
New Mexico	\$4.9	\$4.2	\$3.2	\$3.1	\$3.6	2003	2004	2003	2003
New York	\$103.9	\$90.4	\$68.4	\$66.7	\$76.2	2002	2003		2002
North Carolina	\$19.0	\$16.5	\$12.5	\$12.2	\$13.9	2002			2002
North Dakota	\$3.0	\$2.6	\$2.0	\$1.9	\$2.2		2005		
Ohio	\$41.0	\$35.7	\$27.0	\$26.3	\$30.1	2003	2003	2003	2003
Oklahoma	\$8.4	\$7.3	\$5.6	\$5.4	\$6.2	2002	2003	2004	2002
Oregon	\$9.3	\$8.1	\$6.2	\$6.0	\$6.9	2003	2003	2003	2003
Pennsylvania	\$46.8	\$40.7	\$30.8	\$30.0	\$34.3	2003	2004	2003	2003
Rhode Island	\$5.9	\$5.1	\$3.9	\$3.8	\$4.3	2002	2004		
South Carolina	\$9.6	\$8.3	\$6.3	\$6.2	\$7.0	2005	2005		2005
South Dakota	\$2.8	\$2.5	\$1.9	\$1.8	\$2.1	2003	2004	2005	2003
Tennessee	\$19.9	\$17.3	\$13.1	\$12.8	\$14.6	2003	2004	2003	2003
Texas	Not in MSA								
Utah	\$3.6	\$3.2	\$2.4	\$2.3	\$2.7	2002	2004	2002	2002
Vermont	\$3.3	\$2.9	\$2.2	\$2.1	\$2.5	2003	2003	2003	2003
Virginia	\$16.6	\$14.5	\$11.0	\$10.7	\$12.2	2003	2005		2003
Washington	\$16.7	\$14.5	\$11.0	\$10.7	\$12.3	2003	2003	2003	2003
West Virginia	\$7.2	\$6.3	\$4.8	\$4.6	\$5.3	2003	2003	2003	2003
Wisconsin	\$16.9	\$14.7	\$11.1	\$10.8	\$12.4	2003	2003	2003	2003
Wyoming	\$2.0	\$1.8	\$1.3	\$1.3	\$1.5	2003	2004	2003	2003
Am. Samoa	\$0.12	\$0.11	\$0.1	\$0.1	\$0.1	NA	NA	NA	NA
Guam	\$0.18	\$0.16	\$0.1	\$0.1	\$0.1	NA	NA	NA	NA

States	Estimated NPM Adjustment Withholding Amounts (millions)					Passed NPM Tax Stamping Prohibition	Passed NPM Allocable Share Rules	Passed NPM Quarterly Payments Rules	Passed New NPM Reporting Rules
	2006	2007	2008	2009	2010				
No. Mariana	\$0.07	\$0.06	\$0.0	\$0.0	\$0.1	NA	NA	NA	NA
Puerto Rico	\$9.1	\$7.94	\$6.0	\$5.9	\$6.7	NA	NA	NA	NA
Virgin Islands	\$0.14	\$0.12	\$0.1	\$0.1	\$0.1	NA	NA	NA	NA

Source: National Association of Attorneys General. See, e.g., <http://www.naag.org/backpages/naag/tobacco/msa-payment-info>.

*Stamping Prohibitions.* Prohibits stamping agents from affixing tax stamps to cigarettes of NPMs that are not making their required payments into state escrow accounts, making it illegal to sell noncomplying NPM brands in the state.

*Allocable Share.* The NPM model statute (exhibit T of the MSA) states that if an NPM pays more into escrow on a per unit basis than the state would have received if that NPM were an MSA signer, then the state must refund the difference (often referred to as the "cap release"). This legislation eliminates the "cap release." Without this change, NPMs making sales in only a few states would be making total escrow payments (just to the states where they are operating) in an amount far smaller than the total amount they would have to pay if they joined the MSA.

*Quarterly Escrow Payments.* Requires NPMs to make quarterly, rather than just annual, escrow payments.

*Reporting Requirements.* Requires NPMs to provide additional information to states.

### **Maximum NPM Adjustment Amounts**

The following table shows the maximum NPM adjustment amounts for base years 2003 through 2009. The companies withholdings based on 2003 to 2007 were made from their 2006 to 2010 payments, respectively. Withholdings based on 2008 and 2009 would be taken in 2011 and 2012. But, as noted above, Philip Morris (the largest cigarette company in the USA) has not been withholding any payments based on NPM adjustment claims (reserving its right to take such adjustments out of future payments, instead), which is why the actual amounts that have been withheld are significantly lower than the maximum amounts in the table.

	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Market Share Loss Since 1997	5.94%	5.85%	3.82%	3.48%	3.51%	4.04%	3.97%
Maximum NPM Adjustment %	17.83%	17.55%	11.47%	10.44%	10.52%	12.12%	11.92%
Maximum NPM Adj. Amount	\$1.15 bill.	\$1.14 bill.	\$753 mill.	\$703 mill.	\$794 mill.	\$918 mill.	\$842 mill.
Actual Amount Withheld	\$813 mill.	\$699 mill.	\$536 mill.	\$522 mill.	\$597 mill.	NA	NA

Source: National Association of Attorneys General, <http://www.naag.org/backpages/naag/tobacco/msa-payment-info>.

### **Additional Information**

Campaign factsheets relating to MSA payments, including problems with securitizing settlement payments, [http://www.tobaccofreekids.org/facts\\_issues/fact\\_sheets/policies/settlements\\_us\\_state/](http://www.tobaccofreekids.org/facts_issues/fact_sheets/policies/settlements_us_state/).

Full copy of the MSA, <http://www.naag.org/backpages/naag/tobacco/msa>. [See Sec. IX(d) re NPM Adjustment]

MSA says that tobacco settlement payments should be used by the states to reduce tobacco use and address tobacco harms, <http://tobaccofreekids.org/research/factsheets/pdf/0203.pdf>.