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ARIZONA LUXURY TAX RULING LTR 20-1

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

ISSUE:

Treatment of “heat-not-burn” products for tobacco tax purposes.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) §§ 42-3051, 42-3251, 42-3251.01, 42-3251.02, and 42-3302 levy Arizona state tobacco taxes on, among other things, cigarettes as defined in A.R.S. § 42-3001.

A.R.S. 42-3001(6) defines a “cigarette” for the purposes of taxation and regulation under A.R.S. Tit. 42, Ch. 3, as either of the following:

- a. Any roll of tobacco wrapped in paper or any substance not containing tobacco.
- b. Any roll of tobacco wrapped in any substance containing tobacco that, 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 a consumer as a cigarette described above, to be interpreted consistently with classification guidelines established by the federal Alcohol and Tobacco Tax and Trade Bureau.

A.R.S. § 44-7101, Sec. 2(d) provides that, for the purposes of A.R.S. § 44-7101 (the “Escrow Statute”) and A.R.S. § 44-7111 (the “Directory Statute”) representing Arizona’s enactment of model statutes described in the Master Settlement Agreement and subsequent agreements between the state and certain tobacco product manufacturers, a “cigarette” is defined as:

any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, 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; or (3) 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 clause (1) of this definition.

RULING:

For the purposes of this ruling, heat-not-burn products generally refer to a category of devices that heat tobacco to generate an aerosolized emission of nicotine and other chemicals that a user then inhales. As can be inferred by the name, the tobacco used in a heat-not-burn device does not require combustion to enable nicotine delivery to the user.

Although modern heat-not-burn products are in the earlier stages of being marketed in this country, the current offerings that have received approval from the U.S. Food and Drug Administration (FDA) for sale in the United States are marketed as "HEETS" or "HeatSticks" (hereafter "Heatsticks"), for use in IQOS electric tobacco heating devices.¹ HEETS units are described by their manufacturer as consisting of "a tobacco plug, hollow acetate tube, polymer-film filter, cellulose-acetate mouthpiece filter, and outer and mouth-end papers."²

The FDA has issued Premarket Tobacco Product Marketing Orders concluding that the Heatsticks used for the IQOS device "meet the definition of a cigarette in the Federal Food, Drug and Cosmetic Act" and "must adhere to existing restrictions for cigarettes under FDA regulations" and federal law.³ Likewise, for the purposes of Arizona tobacco taxes, the department rules that, based on the manufacturer's description of Heatsticks, such products meet the definition of "cigarette" under A.R.S. § 42-3001(6) and will thus be subject to Arizona tobacco taxes and regulation under A.R.S. Tit. 42, Ch. 3 as cigarettes. Likewise, although the definition is not identical, Heatsticks also meet the definition of "cigarette" for the purposes of enforcing the state's Escrow and Directory Statutes.

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SIGNED: March 25, 2020

Explanatory Notice: The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law that are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement that provides interpretation, details or supplementary information concerning the application of the law. Relevant statute, case law or

¹ "HeatSticks," "HEETS," and "IQOS" are trademarks of Philip Morris Products S.A.

² HEETS | PMI - Philip Morris International, PMI.COM, <https://www.pmi.com/glossary-section/glossary/heets-and-heatsticks> (last visited Feb. 21, 2020) [<https://web.archive.org/web/20200221213702/https://www.pmi.com/glossary-section/glossary/heets-and-heatsticks>].

³ Press Release, FDA, FDA Permits Sale of IQOS Tobacco Heating System Through Premarket Tobacco Product Application Pathway (Apr. 30, 2019), <https://www.fda.gov/news-events/press-announcements/fda-permits-sale-iqos-tobacco-heating-system-through-premarket-tobacco-product-application-pathway> [<https://web.archive.org/web/20200221214655/https://www.fda.gov/news-events/press-announcements/fda-permits-sale-iqos-tobacco-heating-system-through-premarket-tobacco-product-application-pathway>].

administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.