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LETTER RULING 2015-3

LR 2015-3. Non-Tobacco Products with Nicotine and the Tobacco Products Tax Act

You are a wholesaler in the business of purchasing and selling non-tobacco products (e.g., vapor and herbal products) containing nicotine that are consumed or smoked as a substitute for traditional cigarettes and non-cigarette tobacco products. You ask whether these products are subject to the tax imposed by (or are otherwise regulated under) the Tobacco Products Tax Act (“TPTA”), MCL 205.421 *et seq.*

The TPTA is limited to taxation of tobacco products. A “tobacco product” is defined by the TPTA to mean “cigarettes, cigars, noncigarette smoking tobacco, or smokeless tobacco.” MCL 205.422(w). In turn, the TPTA provides a definition for each of these products, with the exception of cigars:

- *Cigarette*: a roll for smoking *made wholly or in part of tobacco*, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, which roll has a wrapper or cover made of paper or any other material
- *Noncigarette smoking tobacco*: *tobacco* sold in loose or bulk form that is intended for consumption by smoking and includes roll-your-own cigarette *tobacco*.
- *Smokeless tobacco*: *snuff, chewing tobacco, and any other tobacco* that is intended to be consumed by means other than smoking.

The terms “cigar” and “tobacco” are not defined in the TPTA, so it is appropriate to consult a dictionary to determine their plain and ordinary meanings. *People v Gregg*, 206 Mich App 208, 211-212 (1994). The American Heritage College Dictionary (3rd ed) provides the following definitions:

- *Cigar*: a roll of *tobacco* leaves prepared for smoking.
- *Tobacco*: (1) any of various plants of the genus *Nicotiana*, esp. *N. tabacum*, native to tropical America and widely cultivated for their leaves, which are dried and processed chiefly for use in *snuff* or for smoking. (2) The leaves of these plants. (3) Products made from these plants....

The above definitions demonstrate that only products made entirely of tobacco, or containing any amount of tobacco, fall within the purview of the TPTA. Although tobacco contains nicotine, it is the Department’s understanding that nicotine is also present in other plants and organic matter, so the presence of nicotine in a product does not determine whether the product is regulated by the TPTA. Moreover, the Department is aware that there are certain herbal, vapor and gel products available on the market that contain nicotine and are intended to be inhaled or smoked,

but do not contain any tobacco. Because the TPTA does not regulate nicotine, but rather regulates tobacco, while such non-tobacco products may be subject to other provisions of Michigan law (including other tax laws), they are not subject to the TPTA regardless of nicotine content and regardless whether the nicotine is derived from tobacco.

In summary, a product must contain some tobacco in order to be subject to the TPTA. You describe the products at issue as “non-tobacco” products. Assuming these products contain no tobacco, they would not be subject to taxation or other regulation under the TPTA.

Further information is also available at: www.michigan.gov/taxes.

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