STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL

#99015

NO.
STATE OF NEBRASKA
OFFICIAL
APR 20 1999
DEPT. OF JUSTICE

DATE: April 16, 1999

SUBJECT: LB 574 - Application to Roll-your-own tobacco

REQUESTED BY: Mary Jane Egr, Tax Commissioner

WRITTEN BY: Don Stenberg, Attorney General
Steve Grasz, Deputy Attorney General

You have requested an Attorney General's Opinion as to whether the Department of Revenue must "collect information on those products, such as roll-your-own tobacco . . . that are not stamped under Nebraska law" for purposes of the nonparticipating manufacturers provisions of LB 574. You note that LB 574 is currently on Final Reading, with an emergency clause, and so the Department must prepare to carry out its provisions.

Pursuant to LB 574, the Tax Commissioner is required to collect certain information regarding cigarettes sold in Nebraska. LB 574 is Nebraska's version of a model statute introduced across the country in conjunction with the tobacco Master Settlement Agreement which settled the States' litigation against tobacco manufacturers.

LB 574 provides that "Any tobacco product manufacturer selling cigarettes to consumers within the State . . . shall do one of the following: (1) Become a participating manufacturer . . . or (2) (a) Place into a qualified escrow fund by April 15 . . . the following amounts. . . . . (i) 1999: $.0094241 per unit sold after the effective date of this act . . . .". LB 574, Ninety-sixth Legislature, First Session, § 2 (emphasis added).

David K. Arterburn
L. Jay Bartel
Kristine D. Brenneis
J. Kirk Brown
Marie C. Clarke
Dale A. Comer
Suzanna Glover-Ettrich
Susan J. Gustafson
Royce N. Harper
Jason W. Hayes
Amber F. Herrick
Amy Hollenbeck
William L. Howland
Marilyn B. Hutchinson
Therese N. James
Kimberly A. Klein
Charlotte R. Koranda
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson
Donald J. B. Miller
Ronald D. Moravec
Fredrick F. Neid
Perry A. Pirsch
Paul N. Potadle
Mark D. Raffety
Carla Heathershaw Risko
Hobert B. Rupe
James D. Smith
James H. Spears
Mark D. Starr
Martin Swanson
John R. Thompson
Barry Waid
Terri M. Weeks
Melanie J. Whittamore-Mantzios
Linda L. Willard

Printed with soy ink on recycled paper

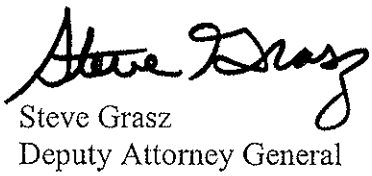
The bill defines "cigarettes" as including "roll-your-own tobacco", ***id.*** at § 1 (4), and provides that "nine hundredths of an ounce of roll-your-own tobacco shall constitute one individual cigarette." ***Id.*** The bill also defines "units sold" as the number of cigarettes sold "as measured by excise taxes collected by the State on packs or roll-your-own tobacco containers bearing the excise tax stamp of the State." ***Id.*** at § 1 (10) (emphasis added).

It is clear the bill is intended to encompass roll-your-own tobacco within the definition of cigarettes, and thereby encompass the escrow fund requirements for this product. However, under the bill's express terms the amount payable by nonparticipating manufacturers into escrow is based on units sold, which is defined (for purposes of roll-your-own tobacco) to include only those "roll-your-own tobacco containers bearing the excise tax stamp of the State."

In Nebraska, some tobacco products, such as roll-your-own tobacco, are sold in containers which are not required to bear a State excise tax stamp. ***See*** Neb.Rev.Stat. §§ 77-4007, 77-4008. It is our opinion the bill would be unenforceable as to tobacco sold in containers not bearing a State excise tax stamp. Therefore, the Department of Revenue need not collect additional information on tobacco sold in unstamped containers, unless and until such time as the excise tax stamp statutes or the nonparticipating manufacturer provisions are amended so as to change this result.

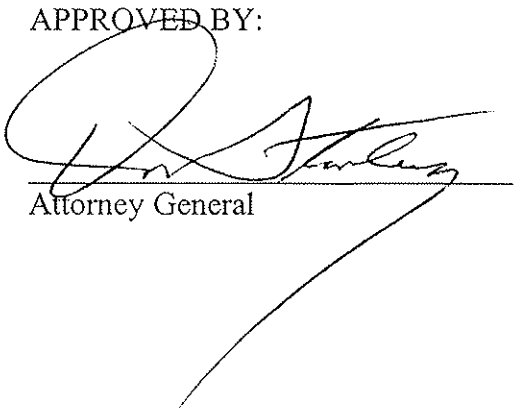
Sincerely,

Don Stenberg
Attorney General



Steve Grasz
Deputy Attorney General

APPROVED BY:



Attorney General

1-359-21