



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

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March 26, 2007

Tobacco Enforcement Section
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Alcohol and Tobacco Tax and Trade Bureau
Regulations and Rulings Division
Attention: Mr. Frank Foote
1310 G Street, NW
Suite 200
Washington, D.C. 20220

Re: Notice No. 65/Tax Classification of Cigars and Cigarettes

Dear Mr. Foote:

Pennsylvania was one of the 39 states and one territory that submitted a petition to the TTB in 2006 which requested new regulatory classifications for cigars and cigarettes because of the proliferation of products that function as cigarettes but are being taxed and sold as cigars. Generally speaking, we support the proposed TTB regulations because they implement the public health and tax policy of classifying and taxing as cigarettes any product that functions like a cigarette.

Our sister states have submitted comments on the proposed regulations. We write separately because the proposed regulations appear to reclassify as "cigarettes" pipe tobacco-filled "cigars" which have been taxed and sold as a large cigars for many years. These products do not share the physical characteristics or packaging of traditional cigarettes.

The States' principal concern in suggesting that TTB's classifications of cigarettes and cigars needed to be changed was to combat products that were masquerading as little cigars but in reality were cigarettes. The classic example of such a product was a "little cigar" with a cellulose acetate integrated filter, wrapped in brown paper, which was the same length and diameter as a traditional cigarette and packaged in a pack containing 20 sticks. These products

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are often marketed as cigarette substitutes and, to all intents and purposes, that is their reason for being. By contrast, a pipe tobacco-filled cigar without an integral filter; sold by the stick or in packs of less than ten sticks; and which is not the same size and shape as a traditional cigarette; does not raise the same concern because there is no intent to deceive consumers or evade taxes. We did not intend to suggest that this class of product be reclassified as a cigarette.

The proposed reclassification properly considers the sugar content in the final product. We believe, however, that the sugar content should not be considered in a vacuum. In our view, high sugar content products that contain flavorings such as grape or pineapple should not be treated as cigars because cigars are not traditionally sold in such flavors. By contrast, it may be appropriate for some high sugar content pipe tobacco-filled products without an integral filter to be classified as a cigar.

Accordingly, we ask that the TTB carefully consider whether changes are warranted that would preserve the integrity of the underlying rulemaking without causing all pipe tobacco-filled cigars to be reclassified as cigarettes.

Sincerely,



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