

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO**

IN RE:

PETITION FOR DECLARATORY
STATEMENT ON BEHALF OF
ES DISTRIBUTIONS, LLC,

DABT CASE NO.: 2023-001779

Petitioner.

DS 2023-001

FINAL ORDER GRANTING PETITION FOR DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (“Division”), pursuant to section 120.565, Florida Statutes, hereby issues this Final Order granting the Petition for Declaratory Statement (“Petition”) filed by ES Distributions, LLC (“Petitioner”) with the Division on January 9, 2023.¹

FACTS ALLEGED

1. Pursuant to Rule 28-105.003, *Florida Administrative Code*, the Division relies solely on the facts alleged by Petitioner as presented within the Petition for the purpose of this Final Order, which provides, in pertinent part, as follows: Petitioner “intends to sell rolling papers as a distributor in Florida.”

QUESTION PRESENTED

2. Petitioner requests the Division issue an opinion as whether a license is required to sell “rolling papers” as a distributor in the state of Florida under Chapters 210 and 569, Florida Statutes. Specifically, the question is presented as follows: Petitioner requests “that the Division clarify whether it requires a license to sell rolling papers as a distributor.”

¹ Notice of the Petition was published in the *Florida Administrative Register*, Volume 49, Number 08, on January 12, 2023. No petition to intervene was filed and no hearing on the Petition was requested, nor held.

CONCLUSIONS OF LAW

3. The Division has authority to issue declaratory statements pursuant to section 120.565, Florida Statutes.

4. Section 120.565(1), Florida Statutes, provides that “[a]ny substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency.” Furthermore, Rule 28-105.001, *Florida Administrative Code*, provides that a declaratory statement “is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.”

5. In the present matter, Petitioner has requested the Division issue a declaratory statement regarding the applicability of Chapters 210 and 569, Florida Statutes, as it applies to Petitioner selling “rolling papers” as a distributor in Florida. Petitioner is a substantially affected person and has standing to bring this Petition. Furthermore, the Division has the authority to interpret Chapters 210 and 569, Florida Statutes, and issue a declaratory statement with respect thereto.

6. Part II of Chapter 210, Florida Statutes does not require Petitioner to be licensed because “rolling papers” do not fall within the definition of “tobacco products” as defined by section 210.25(12), Florida Statutes.


7. Part I of Chapter 569, Florida Statutes, also does not require Petitioner to obtain a permit to distribute rolling papers, because, pursuant to section 569.003(1)(a), Florida Statutes, a permit is only required to “deal, *at retail*, in tobacco products in [Florida]” (Emphasis added). Accordingly, the requirements of section 569.003(1)(a), do not apply to Petitioner, because Petitioner has stated that it intends to operate as a distributor, not a retailer.

CONCLUSION

Having considered the facts and circumstances set forth in the Petition, it is ORDERED that the Division hereby GRANT Petitioner's Petition for Declaratory Statement and answers as follows: No, Petitioner is not required to obtain a license or permit under Chapters 210 and 569, Florida Statutes, to sell "rolling papers" as a distributor in the state of Florida. These conclusions have no application in the event that the factual circumstances and/or relationships among the entities described herein are incorrect or change, or in the event the law or rules pertinent to Petitioner's petition are modified in the future.

DONE and ORDERED in Tallahassee, Florida this 16th day of March, 2023.





R. Sterling Whisenhunt, Director
Division of Alcoholic Beverages and Tobacco

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party substantially affected by this final order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty (30) days of rendition of this order, in accordance with Rule 9.110, Florida Rules of Appellate Procedure, and section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I hereby certify that the preceding FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT has been provided via electronic mail and U.S. Mail to the following parties on this 7th day of April, 2023.

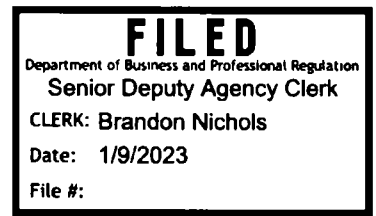
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Copies furnished to:
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**PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO**

Petitioner, ES Distributions, LLC, hereby requests a declaratory statement from the Florida Division of Alcoholic Beverages and Tobacco, and states:

Petitioner's Name and Address:

Name: ES Distributions, LLC
Address: 1400 Northwest 96th Avenue
Doral, Florida 33172
Telephone: (786) 600-2727
Email: ncast01@esdistributions.com

DS 2023-001

Petitioner's Attorneys' Names and Address:

Name: Frederic Rocafort
Robert Kossick
Address: Harris Bricken Sliwoski, LLP
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STATUTORY PROVISIONS, AGENCY RULE(S), OR AGENCY ORDER(S) ON WHICH THE DECLARATORY STATEMENT IS SOUGHT

210.35(1) Distributor's license required; application; out-of-state applicant.—

No person shall engage in the business of selling or dealing in tobacco products as a distributor in any place of business in this state without first having received a license from the division to engage in such business at the place of business. Every application for such license shall be made on a form prescribed by the division and shall state the name and address of the applicant; if the applicant is a firm, partnership, or association, the name and address of each of its members, if the applicant is a corporation, the name and address of each of its officers; the address of its principal place of business; the place where the business to be licensed is to be conducted; and such other information as the division may require for the purpose of the administration of this part.

210.25(12) Definitions.—As used in this part:

“Tobacco products” means loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but “tobacco products” does not include cigarettes, as defined by s. 210.01(1), or cigars.

569.003(1)(a) Retail tobacco dealer permits; application; qualifications; fees; renewal; duplicates. —

Each person, firm, association, or corporation that seeks to deal, at retail, in tobacco products within this state, or to allow a tobacco products vending machine to be located on its premises in this state, must obtain a retail tobacco products dealer permit for each place of business or the premises where tobacco products are sold. Each retail dealer owning, leasing, furnishing, or operating vending machines through which tobacco products are sold must obtain a permit for each machine and shall post the permit in a conspicuous place on or near the machine; however, if the dealer has more than one vending machine at a single location or if tobacco products are sold both over the counter and through a vending machine at a single location, the dealer need obtain only one permit for that location.

569.002(8) Definitions.—As used in this part, the term:

“Tobacco products” includes loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

**DESCRIPTION OF HOW THE STATUTES, RULES, OR ORDERS MAY
SUBSTANTIALLY AFFECT THE PETITIONER IN THE PETITIONER'S
PARTICULAR SET OF CIRCUMSTANCES**

Petitioner, ES Distributions, LLC (“ES Distributions”) intends to sell rolling papers as a distributor in Florida. Fla. Stat. § 210.35(1) requires a license to “engage in the business of selling or dealing in *tobacco products* as a distributor in any place of business in [Florida]” (emphasis supplied).

Fla. Stat. § 210.35(1) is contained in Part II of Chapter 210 of the Florida Statutes. According to Fla. Stat. § 210.25(12), as used in Part II, the term “tobacco products” includes only “loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco, fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but 'tobacco products' does not include cigarettes, as defined by s 210.01(1), or cigars.” This definition of “tobacco products” does *not* include rolling papers. It follows that a license is *not* required to sell *rolling papers* as a distributor in Florida.

“Tobacco products” are defined differently in Part I of Chapter 569 of the Florida Statutes, which requires a retail tobacco products dealer permit to “deal, at retail, in *tobacco products* within [Florida]” (emphasis supplied). Fla. Stat. § 569.003(1)(a). According to Fla. Stat. § 569.002(8), as used in Part I of Chapter 569, “loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and *cigarette wrappers*, which can be used for smoking, sniffing, or chewing” (emphasis supplied).

ES Distributions understands the term “cigarette wrappers” to include rolling papers. Consequently, it has obtained a Retail Tobacco Products Dealer license (no. TOB2333023) from the Florida Department of Business & Professional Regulation.

Due to the divergent definitions of “tobacco product”, ES Distributions has contacted the Division of Alcoholic Beverages and Tobacco (the “Division”), through the undersigned attorneys, to seek clarification. However, guidance from the Division has been highly qualified and inconsistent. As a result, ES Distributions is unclear on its legal obligations concerning the selling of rolling papers as a distributor in Florida.

Considering the foregoing, ES Distributions respectfully requests that the Division clarify whether it requires a license to sell rolling papers as a distributor.

Respectfully submitted this 9th day of January, 2023,

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