

**DBPR Agency Clerk  
Division of Alcoholic Beverages & Tobacco  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2202  
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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 96<sup>th</sup> Avenue  
Doral, Florida 33172  
Telephone: (786) 600-2727  
Email: ncast01@esdistributions.com

**DS 2023-001**

**Petitioner's Attorneys' Names and Address:**

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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 9<sup>th</sup> day of January, 2023,

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