

**NATIONAL TOBACCO GROWER SETTLEMENT TRUST AGREEMENT  
AMENDMENT NUMBER ONE**

WHEREAS, a dispute arose in September of 2003 concerning Annual Payments payable under the National Tobacco Grower Settlement Trust Agreement, dated July 19, 1999, among the Settlers, the Grower States and JPMorgan Chase Bank (formerly, The Chase Manhattan Bank), as Trustee (the "Agreement") due to the withholding by certain Settlers of their third quarter payments under the Agreement; and

WHEREAS, in October and November of 2003, each of JPMorgan Chase, as Trustee of the National Tobacco Grower Settlement Trust; the North Carolina Phase II Tobacco Certification Entity, Inc.; the Kentucky Settlement Trust Corporation; and the Virginia Tobacco Trust Certification Board, Inc. filed motions for specific performance of the Agreement with the Court of Jurisdiction; and

WHEREAS, the Settlers, the Trustee and the Certification Entities have negotiated a compromise of some of the issues giving rise to the dispute; and,

WHEREAS, as a result of the compromise, the Certification Entities requested and directed the Trustee, with the agreement of the Settlers, to submit to the Court of Jurisdiction this Amendment Number One which provides for, among other things, a refund of a portion of the Annual Payments under certain circumstances; and

WHEREAS, the Settlers have now made all payments scheduled under the Agreement through December 31, 2003 and the Settlers have agreed that they will make all future quarterly payments as and to the extent required by the terms of the Agreement and this Amendment Number One;

NOW THEREFORE the Agreement is amended as follows:

A) Section 1.02, Payments of Income and Principal, is amended by inserting, at the start of the first sentence, the words "*After December 15 but*" and, at the end of the first paragraph, the following sentence: "*Nothing in this paragraph shall prevent the Trustee from making payments out of Grower State reserve accounts to the extent that such accounts are funded from prior years' payments in accordance with instructions contained in a validly submitted supplemental signed statement.*"

B) Section 1.11, Irrevocability and Prohibition on Reversion, is amended by striking its final sentence and inserting the following sentence instead: "*Except as provided in Schedule A to ensure that the Settlers receive a full credit for any Tax Offset Adjustment, under no circumstances shall any amount of principal or income held in this Trust ever revert to the Settlers.*"

C) Section 4.04, Non-Admissibility, is amended by inserting, at the end of the paragraph just after the words “arising under or relating to this Trust Agreement,” the following sentence: “*The provisions of this Section 4.04 shall apply in equal force to Amendment Number One.*”

D) Section 4.15, Dispute Resolution, is amended by striking its final sentence and inserting the following sentence instead: “*Except as provided in Schedule A to ensure that the Settlers receive a full credit for any Tax Offset Adjustment, no refund shall be made to any Settlor.*”

E) Schedule A, Payment Schedule, is amended as follows:

- a. The General section is amended by inserting, after the final sentence on page A-1 after the parenthetical “(and to subsequent payments as necessary to ensure full credit),” the following sentence: “*The Settlers shall be entitled to a refund under the circumstances set forth in the Refund section provided for in Amendment Number One. In no event will any refund reduce or affect a Grower State reserve account or any account established by the Trustee to the extent that either such type account is funded from prior years’ payments. No refund will be made or solicited from monies already distributed by the Trustee to any Tobacco Quota Owner or Tobacco Grower.*”
- b. The Tax Offset Adjustment section is amended by inserting, at the bottom of page A-6 after the sentence that reads “The amount of the Governmental Obligation used for any of the purposes set forth above shall be the ‘Grower Governmental Obligation,’” the following sentence: “*Settlers shall not claim entitlement to a Tax Offset Adjustment based upon proposed changes in laws, regulations, or other governmental provisions.*”
- c. On page A-11, just after the Tax Offset Adjustment section and just before the MSA Finality Adjustment section, the following new section shall be inserted:

*Refund: A Settlor that has become entitled to a Tax Offset Adjustment under this Schedule A by reason of a Governmental Obligation shall make reasonable estimates of (x) the aggregate amount of Tax Offset Adjustments attributable to that Governmental Obligation to which it expects to become entitled from the year in which the Tax Offset Adjustment is first effective through 2010, (y) the Settlor’s share of the remaining Annual Payment to be made in the year in which the Tax Offset Adjustment first becomes effective, and (z) the Settlor’s share of all remaining Annual Payments for all years subsequent to the year in which the Tax Offset Adjustment first becomes effective. If the Settlor reasonably estimates that clause (x) in the preceding sentence exceeds the sum of*

*clauses (y) and (z), then such Settlor shall be entitled to a refund, up to the amount of that excess, of its share of the Annual Payment it made during the calendar year in which the Tax Offset Adjustment first became effective, regardless of whether such amounts have been placed in reserve (including all interest accrued thereon). The fact that a Settlor has claimed a refund under this Schedule A shall not affect or prejudice such Settlor's ability to reduce the amount of its future payments arising from a Tax Offset Adjustment.*

*Each Settlor's refund shall be reduced by its pro rata portion (based on the Relative Market Share used to determine each Settlor's Annual Payment for that calendar year) of a sum equal to \$2,000,000 (two million dollars) for each quarterly payment to be made by the Settlers in the calendar year for which such refund is due. These funds may be used by the Trustee and the Certification Entities to pay reasonable and necessary operating expenses incurred for that year (the "Administrative Funds"). Such operating expenses shall be consistent with the operating expenses historically incurred by the Trustee and the Certification Entities during the term of the Agreement. At the end of the year any Administrative Funds not expended by the Trustee or the Certification Entities for operations shall be returned to the Settlers in pro rata fashion.*

*In the event that a Settlor contends that it is entitled to a refund, such Settlor shall provide written notice of such position to the Trustee, and such Settlor shall further state the amount of refund it contends is due (the "Refund Notice"). Within thirty (30) days of receipt of the Refund Notice, the Trustee shall pay the claiming Settlor any portion of the claimed refund that the Trustee does not dispute and shall provide the claiming Settlor with written notice of the portion of the claimed refund, if any, that the Trustee disputes. In the event the Trustee does not provide the full amount of the refund claimed by such Settlor, there shall be deemed a dispute. Notwithstanding any other provision claimed to be to the contrary in this Agreement (including any arbitration or other dispute resolution provision), the Court of Jurisdiction shall have exclusive jurisdiction to resolve any dispute regarding whether a refund is due and, if so, the amount of the refund. The Trustee shall not disburse or transfer any disputed amount a Settlor claims should be refunded for at least one hundred and fifty (150) days after the date of the Refund Notice unless otherwise ordered (including but not limited to a lengthening or shortening of such 150 day period) by the Court of Jurisdiction.*

- d. On page A-18, just after the General Provisions section, the following new section and sub-sections shall be inserted:

Limitations on the Effects of Amendment Number One:

- (i) Non-Deductibility Event Triggered by Amendment Number One:  
*The Settlers agree to waive and release any rights to the remedies set forth in this Schedule A to the Agreement with regard to a Non-Deductibility Event that substantively would not have occurred but for the adoption of Amendment Number One.*
- (ii) Rescission. *If a final determination binding upon the Settlers holds that any provision of Amendment Number One prevents the Settlers from deducting for tax purposes any payments made pursuant to the Agreement, then this Amendment Number One shall be deemed rescinded and shall be treated as void ab initio as if it had never existed; provided, however, that no such rescission shall occur if the final determination only (x) relates to the deductibility of payments as to which a refund has in fact been received by the Settlers under this Amendment Number One, and/or (y) postpones the time of deduction until the amounts at issue have been paid out by the Trust; and, provided further, that no rescission under this subsection (E)(d)(ii) shall cause a Settlor to repay any amounts previously refunded to it.*
- (iii) No Resolution of Tax Offset Adjustment Effective Date Dispute:  
*The Settlers and the Trustee have different interpretations of the language in the original Agreement concerning the date on or from which any Settlor shall be entitled to a reduction arising from a Tax Offset Adjustment. It is agreed and acknowledged that Amendment Number One does not address or resolve this issue, and nothing in Amendment Number One shall be used or construed to have any bearing on the resolution of such issue.*
- (iv) No Impact on Litigation Rights: *It is agreed and acknowledged that this Amendment Number One does not address or resolve the issue whether the Certification Entities may initiate or participate in litigation relating to the Agreement and that nothing in this Amendment Number One shall be used or construed to have any bearing on the resolution of this issue should it arise in the future.*
- (v) Effective Date of Amendment Number One. *Amendment Number One shall not be effective until the date that the Court of Jurisdiction enters an order approving Amendment Number One.*