

DEPARTMENT OF TAXATION

2002 Fiscal Impact Statement

1. **Patron** Dudley

3. **Committee** House Finance

4. **Title** Cigarette Tax: Tobacco Sales and Tax
Information; Penalty

2. **Bill Number** HB 909

House of Origin:

X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would:

- ◆ Allow the Tax Commissioner to disclose any information on the sales or purchases of cigarettes or other tobacco products to any federal, state, or local agency, or any national association of federal, state, or local agencies or to any tobacco product manufacturer required to establish a qualified escrow fund under the Master Settlement Agreement (limited to the brands or products of that manufacturer).
- ◆ Require tobacco product manufacturers to file a monthly report with the department identifying all purchasers of cigarettes with the quantities and brands of cigarettes purchased during the preceding month. Any manufacturer who fails or refuses to file the report would be guilty of a Class 2 misdemeanor and may be subject to a \$5,000 civil penalty.
- ◆ Prohibit any person from purchasing Virginia revenue stamps from anyone other than the department. Violation of this provision would be a Class 6 felony. The department may also revoke the permit issued to any person who violates this provision.

The effective date of this bill is not specified.

This bill was introduced at the request of Attorney General Beales.

6. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

7. **Budget amendment necessary:** No.

8. Fiscal implications:

The basic enforcement costs for the department to enforce the NPM statute are included in the budget bill. The additional enforcement measures included in this bill do not require additional funding.

The effect of this bill on General Fund revenues is unknown. However, as discussed below, the Master Settlement Agreement requires all states to diligently enforce their nonparticipating manufacturers' statute to ensure a state does not see a reduction in the payments it receives from participating manufacturers. The provisions of this bill would give the Commonwealth an additional tool to enhance current enforcement of the NPM statute to protect the payments the Commonwealth receives from participating manufacturers.

9. Specific agency or political subdivisions affected:

Department of Taxation
Office of the Attorney General

10. Technical amendment necessary: None.

11. Other comments:

Master Settlement Agreement

On November 23, 1998, leading United States tobacco product manufacturers, called participating manufacturers (PMs) entered into the Master Settlement Agreement (MSA) with the Commonwealth and 45 other states. The agreement obligated PMs, in return for release from past, present and certain future claims against them, to pay substantial sums to the Commonwealth. Tobacco product manufacturers who are not parties to the MSA, called nonparticipating manufacturers (NPMs), must pay sums into a qualified escrow fund from which claims may be paid if such manufacturers are determined in future years to have acted culpably.

The escrow fund serves as a financial responsibility mechanism to guarantee a source of compensation and to prevent NPMs from becoming judgement-proof before liability may arise. The NPM statute must be diligently enforced to ensure a state is exempt from the application of the NPM adjustment contained in the MSA.

Virginia's Nonparticipating Manufacturers Statute

The NPM Statute requires any tobacco product manufacturer selling cigarettes after July 1, 1999, who does not participate in the MSA to make deposits into a qualified escrow fund. The deposits are based on the number of cigarettes sold in Virginia, multiplied by an amount that increases from \$.0094241 in 1999 to \$.0188482 in 2007 and thereafter, as adjusted for inflation. Funds may be withdrawn from escrow to pay judgements or settlements on certain claims; if the amount deposited exceeds the Commonwealth's allocable share of payments.

The NPM would be required to make under the MSA; or, if not sooner released, 25 years after they were deposited.

The NPM statute also requires that the NPMs certify to the Office of the Attorney General (OAG) annually that it is in compliance with the statute. If the NPM fails to deposit the required funds into the escrow account, the OAG may bring a civil action against the NPM on behalf of the Commonwealth. On the second violation, the manufacturer may be barred from selling cigarettes in the Commonwealth for no more than two years.

Proposal

Disclosure of Information

As the amount of the NPM escrow deposits is based on the number of cigarettes sold by NPMs in Virginia, information is needed on the sales activity of the NPM. The Department of Taxation receives sales information from the wholesale reports provided when the Virginia Cigarette Tax Return is filed.

This bill would create a provision that would authorize the department to disclose information on NPMs and other tobacco product manufacturers regarding sales or purchases of cigarettes or other tobacco products, and tax information relating to such sales or purchases, to any federal, state, or local agency, including any agency of another state or local agency thereof, or any national association of federal, state, or local agencies. In addition, the department would also be authorized to disclose the sales or purchases of cigarettes or other tobacco products to any NPM. This information would be limited to brands or products of that manufacturer only.

Tobacco Product Manufacturer Reporting

Currently, wholesalers of cigarettes are required to file cigarette tax returns on a monthly basis and pay the appropriate tax. These returns include information on the sales of cigarettes by manufactures to the wholesalers. As the amount of the NPM deposits is based on the number of cigarettes sold by NPMs in Virginia, these wholesaler's returns provide sales information for the Commonwealth to evaluate the number of cigarettes sold in or into Virginia by NPMs. However, by requiring manufacturers to file reports listing the sales of cigarettes in Virginia, the Commonwealth would obtain the sales information directly from the manufacturers. As a result, the ability of the Commonwealth to verify the deposits made in escrow by the NPMs would be enhanced. In addition, this additional reporting would help enable the department to ensure that the cigarette tax is more accurately remitted and collected.

Revenue Stamp Enforcement

Current law requires that all packs of cigarettes sold in the Commonwealth must be affixed with a Virginia revenue stamp to denote that all necessary taxes have been paid on such cigarettes. The department is authorized to create and sell such stamps for this purpose. If any person, other than the department, sells revenue stamps, not affixed to cigarettes sold and delivered by them, they are guilty of a Class 6 felony. In addition to this, the department is

authorized to issue permits to qualified wholesalers so they may purchase revenue stamps at a discount of two and one-half cents per carton.

This proposal would expand the current law to purchasers of revenue stamps in the following ways. Any person who purchases revenue stamps from anyone other than the Department would be guilty of a Class 6 felony. Any person who uses or affixes, or causes to be used or affixed, any revenue stamps not purchased from the department by the owner of the cigarettes being handled or stamped, would be guilty of a Class 6 felony. In addition to these penalties, the Department would also be allowed to revoke the permits issued to qualified wholesalers who violate this proposal.

Other Legislation

Senate Bill 451 is identical to this bill.

Senate Bill 511 and **House Bill 908** require every tobacco product manufacturer whose cigarettes are sold in the Commonwealth to certify annually that they are a participating manufacturer in the MSA or that they are contributing to the escrow fund for NPMs.

cc : Secretary of Finance

Date: 01/28/02 CT

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