DEPARTMENT OF TAXATION
2002 Fiscal Impact Statement

1. Patron Puckett

2. Bill Number SB 511

House of Origin:

X **Introduced**

___ **Substitute**

___ **Engrossed**

Second House:

___ **In Committee**

___ **Substitute**

___ **Enrolled**

3. Committee Senate Finance

4. Title Cigarette Tax;
Prohibition Against Stamping, etc.

5. Summary/Purpose:

This bill would require every tobacco product manufacturer whose cigarettes are sold in the Commonwealth to certify annually that they are a participating manufacturer in the Master Settlement Agreement or that they are contributing to the escrow fund for nonparticipating manufacturers.

This bill contains an emergency clause and would be effective upon passage.

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 (Va. Code §§ 3.1-336.1 and 3.1-336.2) 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.

This Proposal

This bill would supply the Commonwealth with an additional tool to enhance current enforcement of the NPM statute.

This bill would 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. The certification would be delivered annually to TAX, the Attorney General, and every wholesale and retail dealer that affixes revenue stamps to tobacco products. The certifications would be required to be submitted between April 16 and April 30 of each year. Accompanying the certification would be a list of each of the cigarette brands of such tobacco product manufacturer sold in the Commonwealth. These certification would be required to be retained for a period of five years by wholesale or retail dealers.

This bill would also prohibit wholesale and retail dealers from affixing revenue stamps on tobacco product manufactured by a manufacturer that is not in compliance with the either the MSA provisions or the reporting requirements under this bill. Any dealer who affixes stamps to cigarettes in good faith reliance on a certification which is subsequently found to be false, would not be subject to any of the penalties provided in this bill. The maximum civil penalty for the violation of this requirement is $5,000.

Other Legislation

House Bill 908 is identical to this bill.

Senate Bill 451 and **House Bill 909** would (1) allow the Tax Commissioner to disclose any information on the sales or purchases of tobacco products to any federal, state, or local agency, or any national association thereof or to any NPM (limited to brands or products of that NPM); (2) 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; and, (3) prohibit any person from purchasing Virginia revenue stamps from anyone other than the department.

cc : Secretary of Finance

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