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HOUSE BILL NO. 2313

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend the Code of Virginia by adding in Title 58.1 a chapter numbered 10.2, consisting of sections numbered 58.1-1038 through 58.1-1043, relating to the imposition of a tax on cigarette manufacturers and providing that the revenues from such tax shall be distributed for the provision of medical assistance services.

Patrons—Plum; Senator: Howell

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 58.1 a chapter numbered 10.2, consisting of sections numbered 58.1-1038 through 58.1-1043, as follows:

CHAPTER 10.2.**CIGARETTE MANUFACTURING TAX.**

§ 58.1-1038. Cigarette manufacturing tax; definitions.

As used in this chapter:

"Cigarette" means the same as that term is defined in § 58.1-1031. The term shall not be construed to include cigars, cheroots, stogies, or little cigars.

"Department" means the Department of Taxation.

"Fund" means the Medical Assistance Services Fund.

"Manufacturer" means any person, as defined in § 1-13.19, who manufactures or produces cigarettes within Virginia.

§ 58.1-1039. Administration and collection of tax.

The Department shall administer the provisions of this chapter, and it shall collect, supervise, and enforce the collection of all taxes, penalties, and interest that may be due under the provisions of this chapter. The Department shall promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) for its administration of this chapter, enforcement of the provisions of this chapter, and collection of the taxes, penalties, and interest imposed by this chapter.

§ 58.1-1040. Rate and period of tax.

There shall be imposed a tax upon each manufacturer for each cigarette it manufactures or produces in Virginia after midnight on December 31, 2003, at the rate of 25 hundredths of a cent per cigarette manufactured or produced.

§ 58.1-1041. Tax returns.

Beginning with the month of February 2004, every manufacturer, on or before the twentieth day of each calendar month, shall file with the Department, on a form prescribed by it, a return under the penalties of perjury, stating the number of cigarettes it manufactured or produced in Virginia during the preceding calendar month. The return shall contain or be accompanied by such further information as the Department shall require. The manufacturer, at the time of filing the return, shall pay to the Department the tax imposed under § 58.1-1040 for the number of cigarettes it manufactured and produced in the preceding month.

§ 58.1-1042. Failure to file return; fraudulent return; penalties; interest; overpayment of tax.

A. When any manufacturer fails to make any return or pay the full amount of the tax required by this chapter, there shall be imposed a specific penalty to be added to the tax in the amount of 5 percent if the failure is for not more than 1 month, with an additional 2 percent for each additional month, or fraction thereof, during which the failure continues, not to exceed 20 percent in the aggregate. In no case, however, shall the penalty be less than \$50 or more than \$1,000 for any monthly return and such \$50-minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under this chapter, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of 25 percent of the amount of the proper tax, but not to exceed \$10,000 for any monthly return, shall be assessed. All penalties and interest imposed by this chapter shall be payable by the manufacturer and collectible by the Department in the same manner as if they were a part of the tax imposed.

B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this

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HB2313

59 chapter when any manufacturer reports his cigarettes manufactured and produced in the preceding
60 month at 50 percent or less of the actual amount.

61 C. Interest at a rate determined in accordance with § 58.1-15 shall accrue on the tax until the same
62 is paid. If the Department determines that the proper amount of tax imposed by this chapter has not
63 been paid by a manufacturer by its due date, the Department shall assess such manufacturer with the
64 deficiency, including penalty and interest, in a written assessment as soon as practical.

65 No deficiency, interest, or penalty shall be assessed for any month after the expiration of 3 years
66 from the date set for the filing of the return for such month, except in cases of fraud, or where no
67 return has been filed for such month.

68 D. If the Department determines that the amount paid the Commonwealth under this chapter in
69 regard to any monthly return was greater than the amount of tax due the Commonwealth, the excess
70 may be taken as a credit by the manufacturer against a subsequent month's tax imposed under this
71 chapter. However, if such manufacturer requests a refund, such excess shall be refunded to the
72 manufacturer within 45 days of the request. The refund shall include interest at the rate provided in
73 § 58.1-15. Interest on such refunds shall accrue from the due date of the return to which such excess is
74 attributable to or the date such excess was paid to the Department, whichever is later, and shall end on
75 a date determined by the Department preceding the date of the refund check by not more than 7 days.

76 § 58.1-1043. Moneys collected; disposition; use of moneys distributed.

77 A. All moneys collected from payment of the taxes, penalties, and interest provided for under this
78 chapter shall be paid into the state treasury to a special nonreverting fund titled the "Medical
79 Assistance Services Fund" (the Fund), which is hereby created. Any moneys deposited to or remaining
80 in the Fund during or at the end of a fiscal year, including interest thereon, shall not revert to the
81 general fund but shall remain in the Fund and shall only be used solely for the provision of medical
82 assistance services pursuant to Virginia's Medicaid Program authorized under Title XIX of the Social
83 Security Act. Interest on all moneys in the Fund shall remain in the Fund and be credited to it.

84 B. The Department of Medical Assistance Services shall (i) administer the moneys in the Fund and
85 (ii) certify in writing to the Comptroller the amount to be distributed from the Fund to each county and
86 city.

87 C. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants
88 issued by the Comptroller upon written request signed by the Director of Medical Assistance Services.