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SENATE BILL NO. 835

Offered January 8, 2003

Prefiled January 6, 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 quarterly to counties and cities to be used solely for certain public school projects, including debt service payments on such projects.

Patrons—Howell, Byrne, Puller and Ticer; Delegates: Dillard, Plum and Scott

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 Local Government School Construction 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 twenty 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.

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59 *B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this*
60 *chapter when any manufacturer reports his cigarettes manufactured and produced in the preceding*
61 *month at 50 percent or less of the actual amount.*

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

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

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

77 *§ 58.1-1043. Moneys collected; disposition; use of moneys distributed.*

78 *A. All moneys collected from payment of the taxes, penalties and interest provided for under this*
79 *chapter shall be paid into the state treasury to a special nonreverting fund titled the "Local Government*
80 *School Construction Fund" (the Fund), which is hereby created. Any moneys deposited to or remaining*
81 *in the Fund during or at the end of a fiscal year, including interest thereon, shall not revert to the*
82 *general fund but shall remain in the Fund and shall only be used for the public school purposes*
83 *provided herein. Interest on all moneys in the Fund shall remain in the Fund and be credited to it.*

84 *The Department of Education shall administer the moneys in the Fund. Beginning with the 2004*
85 *calendar year, moneys in the Fund shall be distributed to the counties and cities of this Commonwealth*
86 *on a set per pupil amount, based on the latest actual adjusted average daily membership as described in*
87 *the general appropriation act and as determined by the Department of Education.*

88 *B. In any county wherein is situated any incorporated town constituting a school division, the county*
89 *treasurer shall pay into the town treasury the proper proportionate amount received by him under*
90 *subsection A in the ratio that the latest actual adjusted average daily membership of such town bears to*
91 *the latest actual adjusted average daily membership of such county.*

92 *C. Moneys in the Fund shall be distributed to counties and cities within 30 days after the end of*
93 *each calendar quarter beginning with the calendar quarter ending on March 31, 2004. The total amount*
94 *to be distributed for a calendar quarter shall equal the balance in the Fund at the end of such quarter*
95 *as determined by the Comptroller. The Department of Education shall certify in writing to the*
96 *Comptroller the amount to be distributed from the Fund to each county and city. Payments to counties*
97 *and cities shall be made by check issued by the State Treasurer on warrant of the Comptroller.*

98 *D. All moneys distributed under this section shall be used by counties, cities and towns solely for*
99 *public school construction, public school additions and renovations, including retrofitting and enlarging*
100 *public school buildings; public school infrastructure, including technology infrastructure; site acquisition*
101 *for public school buildings and public school facilities; or debt service payments on such projects*
102 *completed subsequent to December 31, 1993.*

103 **2. That no moneys distributed to counties or cities, or paid to towns by counties, pursuant to this**
104 **act shall be used as a basis for reducing state basic aid payments.**

105 **3. That no county, city or town receiving a distribution of moneys pursuant to this act shall reduce**
106 **its local appropriation for public education purposes below the amount it appropriated for public**
107 **education purposes in its fiscal year beginning in calendar year 2002.**