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## SENATE BILL NO. 537

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on February 17, 2004)

(Patron Prior to Substitute—Senator Stosch)

A BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:01, relating to a credit against corporate income taxes for cigarettes manufactured and exported.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:01 as follows:

§ 58.1-439.12:01. Credit for cigarettes manufactured and exported.

A. For purposes of this section:

"Base year export volume" means the number of cigarettes manufactured by a corporation, which cigarettes were also exported by such manufacturer during its taxable year beginning in calendar year 2003.

"Cigarette or cigarettes" means the same as that term is defined in § 58.1-1031.

"Current year export volume" means the number of cigarettes manufactured by a corporation, which cigarettes were also exported by such manufacturer in the taxable year for which credit under this section is claimed. The term shall only apply for taxable years beginning on or after January 1, 2004.

"Exported" or "exports" means the shipment of cigarettes to a (i) foreign country, (ii) a possession of the United States, or (iii) a commonwealth of the United States that is not a state such that the cigarettes shipped are relieved of the federal excise tax on cigarettes pursuant to § 5704 of the Internal Revenue Code.

"Manufactured" or "manufactures" means manufactured in Virginia.

B. For taxable years beginning on or after January 1, 2004, any corporation that manufactures cigarettes in Virginia, which cigarettes are exported by such manufacturer, shall be allowed a credit against the tax imposed by § 58.1-400 for such exported cigarettes as follows:

1. If the current year export volume of the corporation is less than 50 percent of the base year export volume for the corporation, no credit shall be allowed for the taxable year.

2. If the current year export volume of the corporation is at least 50 percent but less than 60 percent of the base year export volume for the corporation, the credit allowed shall equal \$0.20 per 1,000 cigarettes of the current year export volume.

3. If the current year export volume of the corporation is at least 60 percent but less than 80 percent of the base year export volume for the corporation, the credit allowed shall equal \$0.25 per 1,000 cigarettes of the current year export volume.

4. If the current year export volume of the corporation is at least 80 percent but less than 100 percent of the base year export volume for the corporation, the credit allowed shall equal \$0.30 per 1,000 cigarettes of the current year export volume.

5. If the current year export volume of the corporation is at least 100 percent but less than 120 percent of the base year export volume for the corporation, the credit allowed shall equal \$0.35 per 1,000 cigarettes of the current year export volume.

6. If the current year export volume of the corporation is at least 120 percent of the base year export volume for the corporation, the credit allowed shall equal \$0.40 per 1,000 cigarettes of the current year export volume.

C. In no event shall the credit allowed under this section for any taxable year to any corporation exceed the lesser of \$6 million or 50 percent of the corporation's income tax liability to the Commonwealth for such taxable year. Any tax credit not usable for a taxable year may be carried over until the full credit is used. If a taxpayer who is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

D. The total amount of tax credits granted under this section to all taxpayers for each fiscal year of the Commonwealth shall not exceed \$6 million. A corporation meeting the requirements of this section shall be eligible to receive a tax credit to the extent the corporation reserves such tax credit through the Department as provided herein.

In order to ensure that the limited amounts of tax credits available under this section in any year are not oversubscribed and are allocated in an orderly and equitable manner, the Department shall

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60 *establish policies and procedures for the reservation of tax credits by eligible corporations. Such*  
61 *policies and procedures shall provide (i) requirements for applying for reservations of tax credits; (ii) a*  
62 *system for allocating available amount of tax credits among eligible corporations; (iii) a method for*  
63 *carrying forward eligibility for tax credits to subsequent periods if an eligible corporation does not*  
64 *obtain a reservation of the tax credit or any portion thereof for which it is eligible in any year as the*  
65 *result of the oversubscription of tax credits; (iv) priorities for allocating reservations to eligible*  
66 *corporations whose eligibility for reservations of tax credits was carried forward from a preceding year*  
67 *but which corporations did not receive a credit to which they were otherwise eligible; (v) a method for*  
68 *the issuance of reservations to eligible corporations that did not initially receive a reservation in any*  
69 *year, if the Department determines that tax credit reservations were issued to other corporations that*  
70 *did not use, or were determined to be wholly or partially ineligible for, a reserved tax credit; and (vi) a*  
71 *procedure for the cancellation and reallocation of tax credit reservations allocated to eligible*  
72 *corporations that, after reserving tax credits, have been determined to be ineligible for all or a portion*  
73 *of the tax credits reserved.*

74 *Actions of the Department relating to the approval or denial of applications for reservations for tax*  
75 *credits pursuant to this section shall be exempt from the provisions of the Administrative Process Act*  
76 *pursuant (§ 2.2-4000 et seq.).*

77 *E. A corporation claiming the credit under this section for a taxable year shall submit with its*  
78 *application for reservation of tax credits and its state income tax return a written statement certifying its*  
79 *base year export volume and current year export volume. It shall also submit with such application and*  
80 *return a listing of its export volumes as reported on its monthly reports to the Bureau of Alcohol,*  
81 *Tobacco and Firearms of the United States Department of the Treasury for each month of the taxable*  
82 *year and a listing for each month of the taxable year of its export volumes to any possession of the*  
83 *United States or commonwealth of the United States that is not a state.*

84 **2. That the Tax Commissioner shall develop and publish guidelines for purposes of implementing**  
85 **the provisions of this act, including guidelines addressing an adjustment to the credit allowed**  
86 **pursuant to this act for cigarettes that are exported but later returned to the manufacturer. The**  
87 **development of such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et**  
88 **seq.).**