# DEPARTMENT OF TAXATION
# 2004 Fiscal Impact Statement

1. **Patron** Allen L. Louderback

2. **Bill Number** HB 1428
**House of Origin:**
__X__ **Introduced**
_____ **Substitute**
_____ **Engrossed**

**Second House:**
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. **Committee** House Finance

4. **Title** Cigarette Tax; Fee Imposed on Nonparticipating Manufacturers

5. **Summary/Purpose:**

This bill would impose a fee of 30 cents per pack of cigarettes sold in the Commonwealth and manufactured by cigarette manufacturers that are not participating in the Master Settlement Agreement. The fee would be remitted by the manufacturer on a monthly basis to the Department of Taxation. All person permitted to stamp cigarettes would be required to file a monthly report of the nonparticipating manufacturer cigarettes stamped during the preceding month.

This bill is effective January 1, 2005.

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

| ***Fiscal Year*** | ***Dollars*** | ***Positions*** | ***Fund*** |
|---|---|---|---|
| 2003-04 | $0 | 0 | GF |
| 2004-05 | $344,225 | 2 | GF |
| 2005-06 | $92,319 | 2 | GF |
| 2006-07 | $95,180 | 2 | GF |
| 2007-08 | $98,142 | 2 | GF |
| 2008-09 | $101,106 | 2 | GF |
| 2009-10 | $104,272 | 2 | GF |

7. **Budget amendment necessary:** Yes
ITEM(S): 284 and 286, Department of Taxation

8. **Fiscal implications:**

Administrative Costs

The Department would incur administrative costs of $344,225 in FY 2005, $92,319 in FY 2006, $95,180 in FY 2007, $98,142 in FY 2008, $101,106 in FY 2009 and $104,272 in FY 2010 and in fiscal years thereafter for systems modifications, forms development, the printing and distribution of updated forms and and 2 additional FTE's for compliance and reporting purposes.

Revenue Impact

The effect of this bill on General Fund revenues is unknown. Based on 2003 cigarette sales in Virginia by the 75 nonparticipating manufacturers, this bill could increase General Fund revenues by as much as $27 million per year.

**9. Specific agency or political subdivisions affected:**

Department of Taxation

**10. Technical amendment necessary:** No.

**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 judgment-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 NPM statute also requires that each NPM certify to the Office of the Attorney General annually that it is in compliance with the statute.

Every tobacco product manufacturer whose cigarettes are sold in Virginia must certify annually to the Tax Commissioner and the Attorney General that it is a PM or NPM in compliance with the NPM statute. In addition to making this designation, each tobacco product manufacturer must include with its certification a list of brand families sold in Virginia. NPMs must also report detailed information on how many units of each brand were sold in the Commonwealth in the preceding year. Only brands covered under the MSA or in the NPM escrow fund may be certified. All manufacturers must maintain records necessary for the certification for a period of five years.

Any person who is authorized to affix stamps to cigarettes or required to pay the excise tax on cigarettes must submit quarterly reports to the Tax Commissioner and the Attorney General that includes a list by brand of the number of cigarettes that such person affixed stamps to during the previous quarter or otherwise paid the tax due for such cigarettes.

Proposal

This bill would impose a fee of 30 cents per pack of cigarettes sold in the Commonwealth and manufactured by a nonparticipating manufacturer. The fee would be remitted by the manufacturer on a monthly basis to the Department of Taxation.

Nonparticipating manufacturers whose cigarettes are sold in the Commonwealth on January 1, 2005 would pay this fee within 30 days of that date. Before a nonparticipating manufacturer whose cigarettes are not sold in the Commonwealth on January 1, 2005 may begin to sell cigarettes in Virginia, it must prepay this fee based on the number of cigarettes that the Department of Taxation reasonably projects will be sold in the first month of sales, or $50,000, whichever is more.

All persons permitted to stamp cigarettes would be required to file a monthly report of the number of stamps affixed to individual packages of nonparticipating manufacturer cigarettes, by manufacturer and brand family, sold by the person for each place of business during the preceding month.

Cigarettes of a nonparticipating manufacturer that has not paid this fee would be treated as cigarettes of a nonparticipating manufacturer that has not provided the certification required under the NPM statute. In addition, persons permitted to stamp cigarettes would be barred from affixing stamps to such cigarettes.

Other Legislation

**Senate 675** would impose a fee of 30 cents per pack on cigarette manufacturers that are not participating in the Master Settlement Agreement.

cc : Secretary of Finance

Date: 2/2/2004 JEM