DEPARTMENT OF TAXATION
2004 Fiscal Impact Statement

1. **Patron** Phillip P. Puckett

2. **Bill Number** SB 675
   House of Origin:
   X **Introduced**
   ____ **Substitute**
   ____ **Engrossed**

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

3. **Committee** Senate Finance

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

5. **Summary/Purpose:**

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

This effective date of this bill is not specified.

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

6a. Expenditure Impact:

Fiscal Year	*Dollars*	*Positions*	*Fund*
2003-04	$237,980	0	GF
2004-05	$179,855	2	GF
2005-06	$98,499	2	GF
2006-07	$101,545	2	GF
2007-08	$104,698	2	GF
2008-09	$107,859	2	GF
2009-10	$111,228	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 $237,980 in FY 2004, $179,855 in FY 2005, $98,499 in FY 2006, $101,545 in FY 2007, $104,698 in FY 2008, $107,859 in FY 2009 and $111,228 in FY 2010 and in fiscal years thereafter for systems modifications, forms development, the printing and distribution of forms, forms processing 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, General Fund revenues would increase by $27 million per year. However, to the extent that nonparticipating manufacturers sell cigarettes manufactured by other manufacturers, the increase in General Fund revenue would be greater.

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 on packs sold by cigarette manufacturers that are not participating in the Master Settlement Agreement whether or not the cigarettes are manufactured by the nonparticipating manufacturer. The fee would be remitted by the nonparticipating manufacturer on a monthly basis to the Department of Taxation, along with a report of the number of cigarettes sold or distributed by it during the preceding month.

Nonparticipating manufacturers whose cigarettes are sold in the Commonwealth on June 30, 2004 would pay this fee beginning in August of 2004. Before a nonparticipating manufacturer whose cigarettes are not sold in the Commonwealth on June 30, 2004 may begin to sell cigarettes in Virginia, it must prepay this fee based on the number of cigarettes that it reasonably projects will be sold in the first month of sales, or $50,000, whichever is more.

Revenues collected from the fee would be appropriated (i) to recover health care costs to the Commonwealth imposed by nonparticipating manufacturers; (ii) to provide such additional funding as needed for programs funded by payments to the Commonwealth under the Master Settlement Agreement; (iii) to fund enforcement and administration of the nonparticipating manufacturer legislation, and the fee imposed by this bill; and (iv) for such other purposes as deemed necessary.

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, 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

House Bill 1428 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