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SENATE BILL NO. 537

Offered January 14, 2004

Prefiled January 14, 2004

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.

Patrons—Stosch; Delegate: O'Bannon

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 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 foreign country 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 the United States.

B. For taxable years beginning or after January 1, 2004, any corporation that manufactures cigarettes, 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 hereunder for any taxable year exceed the lesser of \$6 million or the total amount of tax liability imposed by this chapter. Any tax credit not usable for a taxable year may be carried over to the extent usable for the next succeeding 10 taxable years or until the full credit is utilized, whichever is sooner. 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. A corporation claiming the credit under this section for a taxable year shall submit with its respective corporate income tax return a written statement certifying its base year export volume and current year export volume. It shall also submit with such return a listing of its export volumes as

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59 *reported on its monthly reports to the Bureau of Alcohol, Tobacco and Firearms of the United States*
60 *Department of the Treasury for each month of such taxable year.*
61 **2. That the Tax Commissioner shall develop and publish guidelines for purposes of implementing**
62 **the provisions of this act, including guidelines addressing an adjustment to the credit allowed**
63 **pursuant to this act for cigarettes that are exported but later returned to the manufacturer. The**
64 **development of such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et**
65 **seq.).**