

**DEPARTMENT OF TAXATION
2005 Fiscal Impact Statement**

1. Patron Charles R. Hawkins

2. Bill Number SB 876

3. Committee Passed House and Senate

House of Origin:

 Introduced

 Substitute

 Engrossed

4. Title Cigarette Tax; Penalties

Second House:

 In Committee

 Substitute

 X **Enrolled**

5. Summary/Purpose:

This proposal would make several changes to the reporting requirements, penalties and other administrative provisions of the cigarette tax laws in order to increase compliance with the cigarette tax and to provide consistency with the Non-Participating Manufacturer (NPM) statute.

The effective date of this bill is not specified.

This is a Department of Taxation bill.

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

7. Budget amendment necessary: No.

8. Fiscal implications:

To the extent that this bill increases compliance with the cigarette tax laws, this bill would increase state revenues by an unknown amount. Although the Department would incur some expenses obtaining the background investigations of stamping agents authorized by this bill, the cost of these investigations would be offset by the stamping agent application fee authorized by this bill.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

The state cigarette tax is currently 20 cents per pack. It will increase to 30 cents per pack on July 1, 2005. The cigarette tax is paid by stamping agents when they purchase revenue stamps from the Department to affix to packs of cigarettes. Only manufacturers, wholesale dealers and retail dealers may obtain stamping permits from the Department. A discount equal to 2.5 cents for a ten-pack carton of cigarettes is available to stamping agents.

The cigarette tax laws require stamping agents to follow detailed stamping procedures. These procedures include the filing of a report by the tenth of each month that lists the number of packs stamped in the preceding month, by brand, manufacturer and the entity from which the cigarettes were obtained. Under current law, stamping agents are required to file a report by the tenth of each month listing the cigarettes received by them in the preceding month. In addition to this monthly report, stamping agents are required under the NPM statute to file a quarterly report that lists, by brand, the total number of cigarettes stamped during the previous quarter.

A stamping agent that fails to comply with stamping procedures, including the filing of a monthly report listing all cigarettes stamped in the preceding month, is guilty of a Class 1 misdemeanor and may have its stamping permits revoked by the Department. A stamping agent that fails to file a monthly report listing all cigarettes received in the preceding month is guilty of a Class 2 misdemeanor. Any person who refuses to maintain books and records, refuses to allow the Department to audit records, refuses the Department access to premises, interferes with an agent of the Department or violates the Department's rules and regulations is also guilty of a Class 2 misdemeanor. The Department is not aware of any prosecutions of these criminal offenses.

Proposal

In order to increase compliance, this proposal would allow the Department to suspend or revoke stamping agent permits in more situations. The Department would be authorized to revoke a stamping agent's permit for up to one year if the stamping agent fails to file more than one of the monthly cigarette tax reports in a timely manner in a calendar year. The Department would be authorized to suspend the permit of any stamping agent that refuses to allow the Department to audit its books and records, refuses the Department access to its premises, interferes with an agent of the Department or violates the Department's rules and regulations. The Department would also be authorized to suspend the permit of any stamping agent who violates the cigarette tax provisions with respect to the sale of unstamped cigarettes until such time as the tax and penalties have been paid.

In order to increase compliance with the cigarette tax laws, this proposal would allow the Department to impose civil penalties. A stamping agent that fails to file the monthly report listing all cigarettes stamped in the preceding month would be subject to a penalty of \$500 for each day after the due date. Each failure to file the monthly report listing all cigarettes received in the preceding month or the quarterly NPM report would be penalized by a \$250 penalty. A stamping agent selling cigarettes after its permit was revoked for failure

to file these reports would be subject to a penalty of \$250 per pack of cigarettes. Where willful intent is established, the penalty would be \$2,500 per pack. Any person who attempts to evade the cigarette tax with respect to less than 3,000 packs would be subject to a penalty not to exceed \$500 per pack. Any stamping agent who refuses to allow the Department to audit its books and records, refuses the Department access to its premises, interferes with an agent of the Department or violates the Department's rules and regulations would be subject to a penalty of \$1,000 a day. A stamping agent who violates the cigarette tax laws with respect to the sale of unstamped cigarettes would be subject to a penalty of \$500 per pack.

This proposal would eliminate the unused Class 1 and 2 misdemeanor penalties for failure to file monthly reports and the Class 2 misdemeanor for persons who fail or refuse to allow an audit.

In order to enforce compliance more effectively, this proposal would also authorize the Department to conduct background investigations, including criminal records checks on stamping permit applicants. To offset the costs of the investigations, the Department would be authorized to charge an application or renewal fee not to exceed \$750 to be applied to the costs of processing applications. Any amount collected in excess of such costs as of June 30 in even numbered years would be deposited into the state treasury. The Department would be authorized to deny a stamping permit to an applicant that has been convicted of a felony or certain other crimes. Any person who makes a false statement in an application would be guilty of a Class 1 misdemeanor.

In order to conform the due date of the cigarette tax monthly returns with that of the quarterly NPM report, this proposal would extend the due date of these returns from the tenth to the twentieth of the month. This proposal would correct the definition of the term "carton" to mean eight rather than nine packs of cigarettes with regards to packs of 25 cigarettes.

Other Legislation

House Bill 2625 would increase the cigarette tax dealers discount from 2.5 cents per carton to 2 percent of the price of the cigarette stamps.

House Bill 2629 and **Senate Bill 1202** would modify the conditions under which escrow funds may be released to nonparticipating manufacturers.

House Bill 2899 would exempt exclusive distributors and manufacturers from affixing tax revenue stamps to cigarettes if they are being sold to Virginia stamping agents.

House Bill 2919 and **Senate Bill 1332** would provide for the assignment of NPM escrow funds to the Commonwealth and tax incentive payments to NPMs.

House Joint Resolution 664 would require the Department of Taxation study the feasibility of establishing uniformity and consistency among Virginia's localities in the design and use of tax stamps for local cigarette taxes.

cc : Secretary of Finance

Date: 3/9/2005 JEM