

DEPARTMENT OF TAXATION

2006 Fiscal Impact Statement

1. **Patron** Samuel A. Nixon, Jr.

3. **Committee** House Finance

4. **Title** Cigarette Tax; Penalty for Failure
To Affix Stamps

2. **Bill Number** HB 569

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

The Department understands that the patron will introduce a substitute for this legislation. This fiscal impact statement addresses the substitute bill.

This bill would increase from \$250 per pack to \$500 per pack the penalty for failure to affix tax stamps to cigarettes when the number of packs of cigarettes exceeds 100 packs. This bill would also provide that it is *prima facie* evidence of intent to defraud the Commonwealth when the number of unstamped cigarettes exceeds either 30 packs or 5 percent of the cigarettes in the place of business, whichever is greater. Notwithstanding these threshold limits, it would be *prima facie* evidence of intent to defraud if the number of unstamped packs exceeds 500 packs. This bill would establish a monetary penalty of \$2,500 per pack for selling, purchasing, transporting, receiving or possessing 3,000 or more unstamped packages of cigarettes for the purpose of evading the cigarette tax. Additionally, this bill would create a safe harbor from the penalty for selling, purchasing, transporting, receiving or possessing unstamped cigarettes for a retail dealer who has lawfully purchased the cigarettes from the holder of a stamping agent permit issued by TAX.

Under current law, any person who fails to affix the required stamps to cigarettes is required to pay a penalty of \$250 per pack. Where willful intent exists to defraud the Commonwealth, the person is required to pay a penalty of \$2,500 per pack. It is *prima facie* evidence of intent to defraud when the number of unstamped cigarettes exceeds 30 packs. Under current law, it is a Class 6 felony to sell, purchase, transport, receive or possess 3,000 or more unstamped packages of cigarettes for the purpose of evading the payment of the cigarette tax.

The effective date of this bill is specified.

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

7. **Budget amendment necessary:** No.

8. Fiscal implications:

As the number of packs of cigarettes that are sold, stored or received without the required tax stamp is not known, the impact of this bill on state revenues is unknown.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Penalties for Failure to Stamp Cigarettes

The state cigarette tax is currently 30 cents per pack. 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.

Under current law, any person who sells, stores or receives cigarettes for the purpose of distribution to another and fails to properly affix the required stamps to the cigarettes is required to pay a penalty of \$250. Each pack of unstamped cigarettes is deemed a separate offense. Where willful intent exists to defraud the Commonwealth such person is required to pay a penalty of \$2,500 per pack.

It is *prima facie* evidence of intent to defraud when the number of such unstamped cigarettes exceeds 30 packs. *Blacks Law Dictionary* states that “(p)*prima facie evidence* is evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue which it supports, but which may be contradicted by other evidence.” As intent is difficult to prove, this legal presumption is an important tool in the Department’s cigarette tax enforcement efforts.

Penalties for Possession of Unstamped Cigarettes

Under current law, it is a Class 2 misdemeanor to sell, purchase, transport, receive or possess less than 3,000 unstamped packages of cigarettes for the purpose of evading the payment of the cigarette tax. In addition, the Department may impose a monetary penalty, not to exceed \$500 per pack. Under current law, it is a Class 6 felony to sell, purchase, transport, receive or possess 3,000 or more unstamped packages of cigarettes for the purpose of evading the payment of the cigarette tax. There is currently no monetary penalty when the amount of unstamped cigarettes equals or exceeds 3,000 packs. Any person, other than a licensed stamping agent, who possesses more than 30 packs of unstamped cigarettes is presumed to possess them for purposes of evading the cigarette tax.

Proposal

This bill would increase from \$250 per pack to \$500 per pack the penalty for failure to affix tax stamps to cigarettes when the number of packs of cigarettes exceeds 100 packs. This bill would also provide that it is *prima facie* evidence of intent to defraud the Commonwealth when the number of unstamped cigarettes exceeds either 30 packs or 5 percent of the cigarettes in the place of business, whichever is greater. Notwithstanding these threshold limits, it would be prima facie evidence of intent to defraud if the number of unstamped packs exceeds 500 packs.

This bill would also establish a monetary penalty of \$2,500 per pack for selling, purchasing, transporting, receiving or possessing 3,000 or more unstamped packages of cigarettes for the purpose of evading the cigarette tax. Additionally, this bill would create a safe harbor from the penalty for selling, purchasing, transporting, receiving or possessing unstamped cigarettes for a retail dealer who has lawfully purchased the cigarettes from the holder of a stamping agent permit issued by TAX.

Other Legislation

House Bill 395 would increase the state cigarette tax rate from 30 to 80 cents per pack.

House Bill 612 and **Senate Bill 418** would allow a stamping agent to claim a bad debt deduction against the cigarette tax in situations where a customer fails to pay for stamped cigarettes.

cc : Secretary of Finance

Date: 02/06/2006 JEM