

DEPARTMENT OF TAXATION

2012 Fiscal Impact Statement

1. **Patron** Ryan T. McDougale

3. **Committee** House Finance

4. **Title** Counterfeit and Contraband Cigarettes;
Penalties

2. **Bill Number** SB 347

House of Origin:

☐ Introduced

☐ Substitute

☐ Engrossed

Second House:

☒ In Committee

☐ Substitute

☐ Enrolled

5. **Summary/Purpose:**

The bill would provide criminal and civil penalties for persons other than authorized holders possessing more than 25 cartons of tax-paid cigarettes with the intent to distribute. Tax-paid cigarettes would be defined as cigarettes that either i) bear valid Virginia cigarette tax stamps or ii) were purchased outside the Commonwealth and either bear a valid tax stamp of the applicable stamp or evidence can be provided that the applicable excise taxes have been paid. The bill would also authorize seized cigarettes to be assigned by a court for use by a law-enforcement operation.

The Commonwealth currently imposes the state cigarette tax at the rate of 1.5 cents per cigarette (30 cents per pack of 20 cigarettes). Under current law, all revenues from the Cigarette Tax are deposited into the Health Care Fund.

6. **Budget amendment necessary:** No.

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

8. **Fiscal implications:**

Administrative Costs

The Department considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

The revenue impact of this bill is unknown, but likely minimal. If the penalties for possession of more than 25 cartons of tax-paid cigarettes by persons other than authorized holders result in less volume sales of cigarettes, the bill may result in a decrease in Health Care Fund revenues.

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia State Police

10. Technical amendment necessary: No.

11. Other comments:

Background

House Bill 820 and Senate Bill 476 (2010 *Acts of Assembly*, Chapters 35 and 471) reduced the penalties related to unstamped cigarettes. As a result, the Department issued comprehensive Guidelines and Rules Related to Enforcement (August 13, 2010) in order to provide guidance to taxpayers regarding the civil penalties, the appeals process, and other matters regarding the enforcement of the state cigarette tax.

Stamping agents who fail to properly affix revenue stamps are required to pay a penalty of \$2.50 per pack, up to \$500, for the first violation by a legal entity within a 36 month period, \$5 per pack, up to \$1,000, for the second violation by the legal entity within a 36 month period, and \$10 per pack, up to \$50,000, for the third or subsequent violation by the legal entity within a 36 month period. Stamping agents are required to pay a civil penalty of \$25 per pack, up to \$250,000, where willful intent exists to defraud. Persons other than stamping agents who sell, purchase, transport, receive, or possess unstamped cigarettes, except as otherwise provided by law, are also subject to the same civil penalties.

Proposal

The bill would provide criminal and civil penalties for persons other than authorized holders possessing more than 25 cartons of tax-paid cigarettes with the intent to distribute. Tax-paid cigarettes would be defined as cigarettes that either i) bear valid Virginia cigarette tax stamps or ii) were purchased outside the Commonwealth and either bear a valid tax stamp of the applicable stamp or evidence can be provided that the applicable excise taxes have been paid. Authorized holder would be defined as i) a manufacturer; ii) a wholesale dealer; iii) a stamping agent; iv) a retail dealer; v) an exclusive distributor; vi) an officer, employee, or other agent of the federal government, a state, locality, or political subdivision of a state, having possession of cigarettes in connection with the performance of official duties; vii) a person properly holding tax-exempt cigarettes; viii) a common or contract carrier transporting cigarettes under a proper bill of lading or other documentation.

Persons other than authorized holders who possess more than 25 cartons of tax-paid cigarettes with the intent to distribute would be guilty of a Class 2 misdemeanor for a first offense and a Class 1 misdemeanor for any subsequent offense. Such persons would also be required to pay a penalty of \$2.50 per pack, up to \$5,000, for a first offense, \$5 per pack, up to \$10,000, for a second offense committed within a 36 month period, and \$10 per pack, up to \$50,000, for the third or subsequent offense committed within a 36 month period. The civil penalty would be assessed and collected by the Department.

The bill would also authorize seized cigarettes to be assigned by a court for use by a law-enforcement operation.

The effective date of this bill is not specified.

Similar Legislation

House Bill 479 is identical to this bill.

House Bill 52 would authorize the disclosure of reports, returns, financial documents, or other information filed with or provided to the Attorney General by a stamping agent pursuant to the implementation of the Tobacco Master Settlement Agreement.

House Bill 314 and **Senate Bill 74** would provide that any person who maintains or operates a machine at a retail establishment that enables a person to process a product that is made or derived from tobacco onto a roll or tube, "roll-your-own cigarette machine", shall be deemed a manufacturer of cigarettes. The resulting product would be deemed a cigarette sold to a consumer.

cc : Secretary of Finance

Date: 2/19/2012 AM
DLAS File Name: SB347FE161