

DEPARTMENT OF TAXATION

2015 Fiscal Impact Statement

1. **Patron** Charniele L. Herring

3. **Committee** House Finance

4. **Title** Disclosure of Information; Grand Jury
Subpoenas and Data Clearinghouses

2. **Bill Number** HB 2179

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would eliminate the requirement that confidential tax returns be sent to the clerk of the court for a judge to determine that the information is of such importance that the ends of justice require that the secrecy and confidentiality of the returns be violated when such returns are requested pursuant a subpoena issued by a grand jury of a court of the Commonwealth. Additionally, the bill would authorize the disclosure of data concerning annual tobacco product sales by Nonparticipating Manufacturers ("NPM") to a Data Clearinghouse as required under the NPM Adjustment Settlement Agreement with Participating Manufacturers.

The effective date of this bill is not specified.

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

7. **No Fiscal Impact.** (See Line 8.)

8. **Fiscal implications:**

This bill would have no impact on state or local revenues.

9. **Specific agency or political subdivisions affected:**

Department of Taxation
Office of the Attorney General

10. **Technical amendment necessary:** No.

11. **Other comments:**

Grand Jury Subpoenas

In Virginia, special grand juries may be convened to investigate a particular matter. Under the law, the special grand jury may subpoena persons to appear before it to testify and to

produce specified records, papers, and documents or other tangible things. Additionally, multi-jurisdiction grand juries, which involve more than one jurisdiction, have statewide subpoena power and, through special counsel, may subpoena persons to appear before them to testify and to produce specified records, papers, and documents or other tangible things.

In certain limited circumstances, including in accordance with a proper judicial order or as provided by law, the Tax Commissioner may disclose information acquired by him in the performance of his duties with respect to the transactions, property, income, or business of any person, firm, or corporation. *Virginia Code* § 58.1-109 requires the Tax Commissioner to respond to a summons, subpoena, subpoena duces tecum, or order directing him to produce confidential tax returns by mailing a reproduction or enlargement of the returns to the clerk of the court. The envelope may not be opened unless and until a judge of the court determines that the information is of such importance that the ends of justice require that the secrecy and confidentiality of the returns be violated.

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 NPM Adjustment Settlement Agreement is an effort to resolve disputes relating to the NPM adjustment provisions of the MSA. However, details of the NPM Adjustment Settlement Agreement have not been finalized.

Every tobacco product manufacturer whose cigarettes are sold in Virginia must certify annually to 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. The Attorney General is currently required to compile data on cigarette shipments and share such data with the states that have entered into the MSA, provided that such states impose protections against disclosure that are equivalent to the protections provided by the Commonwealth.

Proposal

This bill would eliminate the requirement that confidential tax returns be sent to the clerk of the court for a judge to determine that the information is of such importance that the ends of justice require that the secrecy and confidentiality of the returns be violated when such returns are requested pursuant a subpoena issued by a grand jury of a court of the Commonwealth. Additionally, the bill would authorize the disclosure of data concerning annual tobacco product sales by Nonparticipating Manufacturers ("NPM") to a Data

Clearinghouse as required under the NPM Adjustment Settlement Agreement with Participating Manufacturers.

The effective date of this bill is not specified.

Similar Legislation

Senate Bill 1010 would authorize the Department to disclose i) whether a person is registered to collect the Retail Sales and Use Tax and to publish the names and registration numbers of such dealers, ii) tax information relating to sellers and purchasers of cigarettes or other tobacco products to any federal, state, or local agency, and iii) any tax information necessary to facilitate the repayment of gap financing to a developer or economic development authority working with a tourism project entitled to sales tax revenues to repay the debt.

cc : Secretary of Finance

Date: 1/25/2015 AM
DLAS File Name: HB2179F161