

DEPARTMENT OF TAXATION

2012 Fiscal Impact Statement

1. **Patron** David B. Albo

2. **Bill Number** HB 52

House of Origin:

 Introduced

 Substitute

 Engrossed

3. **Committee** Senate Finance

4. **Title** Tax Information; Attorney General to
Disclose Information Related to Cigarettes

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would amend the secrecy of information section of the Tax Code (*Va. Code* § 58.1-3) to authorize the disclosure of reports or information filed with the Attorney General by a stamping agent pursuant to the implementation of the Tobacco Master Settlement Agreement statutes. The information must be requested in writing by a tobacco product manufacturer required to establish a qualified escrow fund pursuant to the implementation of the Tobacco Master Settlement Agreement statutes. The disclosure would be limited to information for the current or previous two calendar years, or in any year in which the Attorney General receives information from a stamping agent potentially altering the required escrow deposit of the manufacturer, concerning the cigarette brand families of the requesting manufacturer as listed in the directory of cigarettes approved for stamping and sale published by the Attorney General.

Currently, *Va. Code* § 58.1-3 prohibits the disclosure of reports, returns, financial documents or other information filed with the Attorney General pursuant to the implementation of the Tobacco Master Settlement Agreement except in accordance with a proper judicial order or as otherwise provided by law.

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:**

Office of the Attorney General

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

11. Other comments:

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 escrow fund serves as a financial responsibility mechanism to guarantee a source of compensation and to prevent NPMs from becoming judgment-proof before liability may arise. The NPM statute must be diligently enforced to ensure a state is exempt from the application of the NPM adjustment contained in the MSA.

The NPM Statute requires any tobacco product manufacturer selling cigarettes after July 1, 1999, who does not participate in the MSA to make deposits into a qualified escrow fund. The NPM statute also requires that each NPM certify to the Office of the Attorney General annually that it is in compliance with the statute.

Every tobacco product manufacturer whose cigarettes are sold in Virginia must certify annually to the Tax Commissioner and 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. Only brands covered under the MSA or in the NPM escrow fund may be certified. All manufacturers must maintain records necessary for the certification for a period of five years.

Stamping Agent Reports

Stamping agents must file a quarterly report with the Attorney General that includes a list by brand family of the total number of cigarettes for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes.

Under *Va. Code* § 58.1-3, the Tax Commissioner may not divulge tax information except in certain circumstances. Currently, reports, returns, financial documents or other information filed with the Attorney General pursuant to the Tobacco Master Settlement Agreement are prohibited from being disclosed except in accordance with a proper judicial order or as otherwise provided by law.

Proposal

This bill would amend the secrecy of information section of the Tax Code (*Va. Code* § 58.1-3) to authorize the disclosure of reports or information filed with the Attorney

General by a stamping agent pursuant to the implementation of the Tobacco Master Settlement Agreement statutes. The information must be requested in writing by a tobacco product manufacturer required to establish a qualified escrow fund pursuant to the implementation of the Tobacco Master Settlement Agreement statutes. The disclosure would be limited to information for the current or previous two calendar years, or in any year in which the Attorney General receives information from a stamping agent potentially altering the required escrow deposit of the manufacturer, concerning the cigarette brand families of the requesting manufacturer as listed in the directory of cigarettes approved for stamping and sale published by the Attorney General.

The manufacturer would be allowed to request the information on a quarterly or yearly basis or when the manufacturer is notified by the Attorney General of a potential change in the required escrow deposit. The Attorney General would be required to provide a list of the stamping agents who reported stamping or selling the manufacturer's products and the amount reported within 15 days of the request. The manufacturer would be allowed to request copies of the stamping agents' reports from the Attorney General only if it has requested copies from the stamping agents as provided in the law and not received them. The effective date of this bill is not specified.

Similar Legislation

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 manufactured cigarette sold to a consumer.

House Bill 479 and **Senate Bill 347** would impose criminal penalties for possessing and selling contraband and counterfeit cigarettes. The bill would define contraband cigarettes and dedicate civil penalties collected for possession of counterfeit and contraband cigarettes to the newly established Cigarette Enforcement Fund. The bill would also require retail dealers to maintain certain records for transactions of more than five cartons of cigarettes.

cc : Secretary of Finance

Date: 2/15/2012 AM
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