~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

May 28, 2015

**H. 4151**

Introduced by Reps. Pitts, White, Bannister and D.C. Moss

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Read the first time May 7, 2015.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill is expected to reduce general fund business license tax revenue by an estimated $941,406 in FY2017-18 and reduce general fund business license tax revenue by an estimated $1,807,813 in FY2018-19.

**Explanation of Fiscal Impact**

**Explanation of Amendment (May 20, 2015) – By the House Ways & Means Committee**

**State Revenue**

This amendment would add a new subsection stating that all costs incurred by the department associated with the installation and operation of the cigarette stamp program must be paid from tobacco tax collections. This amendment would require the Department of Revenue to pay all recurring costs associated with the cigarette tax stamp program to be paid from general fund business license tax revenue. This amendment would reduce general fund business license tax revenue by an estimated $75,000 in FY2017-18, and each fiscal year thereafter.

**Explanation of Bill filed on May 7, 2015**

**State Expenditure**

The Department of Revenue estimates that this bill would require that the department hire an additional person to track inventory of the tax stamps and to audit returns related to tobacco tax collections. Also, there should be a revolving fund balance used for the purchase of tax stamps. The amount in the fund balance would depend on the use and administration of the stamps. The department estimates the direct cost to the department’s general fund to be $75,000 without considering the amount of the fund balance.

**State Revenue**

Currently, only three states do not have tax stamps on individual packages of cigarettes – North Carolina, South Carolina, and North Dakota. The imposition of cigarette tax stamps has been to combat illegal smuggling of low-tax rate cigarettes to high-tax rate cigarette states.

This act takes effect on January 1, 2018, except that Section 12-21-735(I) takes effect upon approval by the Governor. Section I of the bill allows the Department of Revenue to promulgate regulations necessary to enforce this section. The following is a section-by-section explanation of the bill.

**Section 1.** This section would amend Section 12-21-735 to direct that each person or distributor of cigarettes is subject to the tax imposed by Section 12-21-620 by affixing stamps to each individual package of cigarettes before being sold, distributed, or shipped to another person. A distributor may affix stamps only to packages of cigarettes obtained directly from a manufacturer or importer with a valid permit issued pursuant to 26 U.S.C. Section 5713. This is a federal permit necessary to engage in the business as a manufacturer or importer of tobacco products or processed tobacco or as an export warehouse proprietor. Only the holder of a federal permit may ship or deliver unstamped packages of cigarettes in, into, or from this State, or may transfer, transport, or cause to be transported unstamped cigarettes from a facility owned by the distributor to another facility owned by the distributor.

The Department of Revenue shall prescribe, prepare, and furnish stamps of denominations and in quantities to licensed distributors tax stamps that indicate the payment of the tax. The stamps must be sold only in multiples of 30,000 stamps such that when affixed on an individual package of cigarettes cannot be removed without being mutilated or destroyed. All stamps must identify the distributor of the cigarettes by a serial number or other mark on the stamp. The stamp must clearly indicate whether the taxes were paid on the package of cigarettes or were exempt from taxes. Stamps may only be affixed to packages of cigarettes that are listed on the South Carolina Tobacco Directory published by the Office of the Attorney General pursuant to Section 11-48-30, the Tobacco Qualified Escrow Fund Enforcement.

As a result of requiring the use of tax stamps, the Department of Revenue would allow a tax credit for the purchase of one stamping machine and equipment acquired by a distributor within one year of implementation by the department. A distributor may receive a tax credit for eighteen months beginning in the first month following the purchase of the machine and equipment. The tax credit would amount to 5.55 percent of the total net purchase of the machinery and equipment up to $125,000, excluding shipping costs, installation, or ongoing maintenance. Any tax credit must be applied only to the tax remitted under this chapter.

If eight distributors are selected as agents by the Department of Revenue with each investing in a tax metering device and allowed to claim a tax credit against business license tax each month for eighteen consecutive months until the entire $125,000 tax credit amount is claimed by the distributors, then general fund business license tax revenue would be reduced by an estimated $1,000,000 over the eighteen month period. Of this amount, general fund business license tax would be reduced by $333,333 in FY2017-18, and reduced by $666,667 in FY2018-19.

The Department of Revenue may designate agents to buy or affix stamps to individual packages of cigarettes to satisfy the payment of taxes. The agent is entitled to a discount of 4.25 percent of the face value of the stamps out of the money to be paid by the agent for the stamps as compensation for their services. The Department of Revenue shall provide a method of purchasing stamps. Currently, pursuant to Section 12-21-735, a person or distributor that is required to remit business license tax to the Department of Revenue may apply a discount of 3.5 percent of the tax due. The bill would revise Section 12-21-735 to allow a distributor who applies cigarette tax stamps to packages of cigarettes a discount of 4.25 percent. Under this bill, the cigarette tax discount is increased by 0.0075 percent of the face value of the stamps.

Based upon the Board of Economic Advisors’ Long Range general fund revenue plan, general fund business license tax revenue is an estimated $24,129,000 in FY2017-18 from the seven-cent per package tax rate. Of this amount, nearly seventy-one percent is from cigarettes, or $17,035,074, and the remaining twenty-nine percent is from other tobacco products, such as cigars, chewing tobacco, and snuff. The fifty cent per package cigarette surcharge is an estimated $120,142,476 in FY2017-18. Collectively, the taxes generated from the sale of cigarettes are an estimated $137,177,550 in FY2017-18. This bill increases the discount allowed by distributors by 0.0075 percent (4.25% in the bill less 3.5% currently permitted). The BEA estimates that an increase in the discount by 0.0075 will reduce general fund business license tax revenue by an estimated $1,066,146. Of this amount, general fund business license tax revenue would be reduced by $533,073 in FY2017-18, and general fund business license tax revenue would be reduced by $1,066,146 in FY2018-19.

Collectively, this bill is expected to reduce general fund business license tax revenue by an estimated $866,406 in FY2017-18 and reduce general fund business license tax revenue by an estimated $1,732,813 in FY2018-19.

**Section 2.** This act takes effect on January 1, 2018, except that Section 12-21-735(I) takes effect upon approval by the Governor.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 12‑21‑735, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STAMP TAX ON CIGARETTES AND TOBACCO PRODUCTS, SO AS TO REQUIRE AND PROVIDE FOR THE PROPER AFFIXING OF STAMPS, INCLUDING PROVISIONS FOR EXEMPT PACKAGES, UNIQUE SERIAL NUMBERING OF STAMPS, REVOCATION OF THE LICENSE OF A PERSON VIOLATING THESE PROVISIONS, LIMITATIONS ON THE RECEIPT AND SALE OF UNTAXED CIGARETTES, TO PROVIDE FOR RETURN AND PAYMENT OF THE TAX, AND TO AUTHORIZE THE DEPARTMENT OF REVENUE TO PROMULGATE REGULATIONS NECESSARY TO ESTABLISH, IMPLEMENT, AND ENFORCE THESE PROVISIONS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 12‑21‑735 of the 1976 Code is amended to read:

“Section 12‑21‑735. (A) Each person or distributor of cigarettes taxable under this article, first receiving untaxed cigarettes for sale or distribution in this State, is subject to the tax imposed in Section 12‑21‑620. ~~Each distributor required to pay the tax shall make a report to the department, in the form the department prescribes, of all cigarettes sold or disposed of in this State, and pay taxes due thereon not later than the twentieth day of the month next succeeding the month of the sale or disposition. However, any person or distributor making shipments of cigarettes to retail locations in and out of this State shall apply to the department for a license which enables them to purchase cigarettes free of tax, and report and pay tax as provided in this section on sales of cigarettes sold to locations in this State.~~

~~The department shall require bonds or statements of financial stability satisfactory to the department to cover possible losses resulting from failure to remit taxes due. When the return required by this section is timely filed and the taxes shown to be due are paid by the date specified in this section, the person or distributor may deduct three and one half percent of the tax due.~~ The taxes imposed on cigarettes pursuant to this chapter must be paid by affixing stamps in the manner and at the time provided in this section. Except as otherwise provided in this section, stamps must be affixed to each individual package of cigarettes by distributors before being sold, distributed, or shipped to another person. A distributor may affix stamps only to packages of cigarettes obtained directly from a manufacturer or importer with a valid permit issued pursuant to 26 U.S.C. Section 5713. If cigarettes are manufactured in this State and sold directly to consumers in this State by a manufacturer or importer, the cigarette packages must be stamped by a licensed distributor before being sold.

(B) Only manufacturers or importers with a valid permit issued pursuant to 26 U.S.C. Section 5713, or licensed distributors, may receive or possess unstamped packages of cigarettes. Only a manufacturer or importer with a valid permit issued pursuant to 26 U.S.C. Section 5713 may ship or otherwise cause to be delivered unstamped packages of cigarettes in, into, or from this State, except that a licensed distributor may transfer, transport, or cause to be transported unstamped cigarettes from a facility owned by the distributor to another facility, wherever located, owned by the distributor.

(C) A qualified distributor licensed pursuant to this chapter may sell cigarettes without South Carolina stamps affixed to the package, provided that:

(1) the cigarettes are set forth in separate stock for sale to a licensed distributor of cigarettes in another state;

(2) if the cigarettes are not in the possession of a qualified distributor licensed pursuant to this chapter, the cigarettes must be in the possession of a person having immediate evidence of a license in business as a distributor of cigarettes in the another state, and the cigarettes must be purchased for the purpose of resale in the other state;

(3) the cigarettes, at the time of sale by the distributor, properly are stamped with revenue stamps authorized and issued by another state for use on the cigarettes, if the other state requires revenue stamps, or any applicable tax imposed on the cigarettes by the other state has been paid if the law of the other state permits the sale of the cigarettes to consumers in a package not bearing a stamp; and

(4) at all times there is accompanying the cigarettes an invoice, indicating the purchase date, the name, address, and telephone number of the seller, and the name, address, and telephone number of the purchaser. A distributor shall have on file a record of each sale, the original purchase order, a copy of the invoice, and a signed receipt from the purchaser showing that the purchase was made exclusively for resale in another state.

(D) Cigarettes may be sold by qualified distributors without revenue stamps affixed to the package when exempted from tax by Section 12‑21‑100. A distributor that receives or possesses cigarettes intended for sale or distribution into or within this State which are exempt from the taxes imposed pursuant to this chapter shall affix stamps that indicate the package of cigarettes is exempt from tax.

(E) The department shall prescribe, prepare, and furnish stamps of denominations and quantities as necessary for the payment of the tax imposed by this chapter. The department also shall cause to be prepared and distributed to licensed distributors stamps that indicate that a package of cigarettes is exempt from the taxes imposed pursuant to this chapter.

(1) The stamps must be of a type that when affixed on each individual package the stamps cannot be removed without being mutilated or destroyed.

(2) The department, by rules and regulations, shall designate the type of stamps to be applied.

(3) The stamps must be sold only in amounts of thirty thousand or multiples of thirty thousand.

(4) In addition to stamps, the department, by rules and regulations, may authorize licensed distributors to use other devices which imprint distinctive indicia evidencing the payment of the tax upon each individual package. The machines must be constructed in a manner as accurately records or meters the number of impressions or tax stamps made. The tax meter machines or other devices must be kept available at all reasonable times for inspection by the department.

(5) The department, by rules and regulations, may authorize a process allowing for a credit for damaged tax stamps, for product returned as unsellable, and for product unrecoverable as a result of bad debt.

(6) The department, by rules and regulations, may authorize a tax credit for the purchase of one stamping machine and equipment acquired by a distributor within one year of implementation by the department. Beginning in the first calendar month following the purchase of the machine and equipment and continuing for the immediately succeeding seventeen months, a distributor may receive a tax credit of the direct costs actually incurred by the distributor, as determined by the department, in an amount equal to

five and fifty‑five one hundredths percent of the total net purchase up to one hundred twenty‑five thousand dollars. The credit must exclude costs for shipping, installation, or for ongoing maintenance related to the machine. Any tax credit must be applied only to the tax remitted under this chapter.

(F) All stamps prescribed by the department must be designed and furnished in a fashion that permits identification of the distributor that affixed the stamp to the particular package of cigarettes by means of a serial number or other mark on the stamp. A stamp on a package of cigarettes must note whether the taxes prescribed in this chapter were paid or whether the package of cigarettes was exempt from the taxes.

(G) Stamps only may be affixed to packages of cigarettes that are listed on the South Carolina Tobacco Directory published by the Office of the Attorney General pursuant to Section 11‑48‑30.

(H) The department may appoint manufacturers and distributors of cigarettes, in or out of this State, as agents to buy or affix stamps to be used in paying the tax imposed by this chapter, but the agent at all times has the right to appoint a person in his employ who is to affix the stamps to any cigarette under the agent’s control.

(1) When the department sells and delivers to an agent, the agent is entitled to receive as compensation for his services and expenses as an agent in affixing and accounting for the taxes represented by the stamps and to retain out of the money to be paid by the agent for the stamps a discount of four and twenty‑five one hundredths percent of the face value of the stamps.

(2) The department, by rules and regulations, shall provide a method of purchasing stamps.

(I) The department may promulgate regulations necessary to enforce this section.

(J) All costs incurred by the department associated with the installation and operation of the cigarette stamp program must be paid from tobacco tax collections.”

SECTION 2. This act takes effect on January 1, 2018, except that Section 12‑21‑735(I) takes effect upon approval by the Governor.

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