

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 915*
House Committee Substitute Favorable 6/24/99
Third Edition Engrossed 6/30/99

Short Title: Tobacco Reserve Fund/Nonparticipating Mfg.

(Public)

Sponsors:

Referred to:

April 14, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A TOBACCO RESERVE FUND FOR TOBACCO PRODUCT
3 MANUFACTURERS NOT PARTICIPATING IN THE MASTER SETTLEMENT
4 AGREEMENT WITH THE STATE OF NORTH CAROLINA.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 66 of the General Statutes is amended by adding the
7 following new Article to read:

8 **"ARTICLE 37.**
9 **"TOBACCO RESERVE FUND.**

10 **"§ 66-290. Definitions.**

11 As used in this Article:

12 (1) 'Adjusted for inflation' means increased in accordance with the formula
13 for inflation adjustment set forth in Exhibit C to the Master Settlement
14 Agreement.

15 (2) 'Affiliate' means a person who directly or indirectly owns or controls, is
16 owned or controlled by, or is under common ownership or control with,
17 another person. Solely for purposes of this definition, the terms 'owns,'
18 'is owned,' and 'ownership' mean ownership of an equity interest, or the

1 equivalent thereof, of ten percent (10%) or more, and the term 'person'
2 means an individual, partnership, committee, association, corporation,
3 or any other organization or group of persons.

4 (3) 'Allocable share' means Allocable Share as that term is defined in the
5 Master Settlement Agreement.

6 (4) 'Cigarette' means any product that contains nicotine, is intended to be
7 burned or heated under ordinary conditions of use, and consists of or
8 contains (i) any roll of tobacco wrapped in paper or in any substance not
9 containing tobacco; or (ii) tobacco, in any form, that is functional in the
10 product, which, because of its appearance, the type of tobacco used in
11 the filler, or its packaging and labeling, is likely to be offered to, or
12 purchased by, consumers as a cigarette; or (iii) any roll of tobacco
13 wrapped in any substance containing tobacco which, because of its
14 appearance, the type of tobacco used in the filler, or its packaging and
15 labeling, is likely to be offered to, or purchased by, consumers as a
16 cigarette described in clause (i) of this definition. The term 'cigarette'
17 includes 'roll-your-own' (i.e., any tobacco which, because of its
18 appearance, type, packaging, or labeling is suitable for use and likely to
19 be offered to, or purchased by, consumers as tobacco for making
20 cigarettes). For purposes of this definition of 'cigarette,' 0.09 ounces of
21 'roll-your-own' tobacco shall constitute one individual 'cigarette.'

22 (5) 'Master Settlement Agreement' means the settlement agreement (and
23 related documents) entered into on November 23, 1998, by the State and
24 leading United States tobacco product manufacturers.

25 (6) 'Qualified escrow fund' means an escrow arrangement with a federally
26 or State chartered financial institution having no affiliation with any
27 tobacco product manufacturer and having assets of at least one billion
28 dollars (\$1,000,000,000) where such arrangement requires that such
29 financial institution hold the escrowed funds' principal for the benefit of
30 releasing parties and prohibits the tobacco product manufacturer placing
31 the funds into escrow from using, accessing, or directing the use of the
32 funds' principal except as consistent with G.S. 66-291(b).

33 (7) 'Released claims' means Released Claims as that term is defined in the
34 Master Settlement Agreement.

35 (8) 'Releasing parties' means Releasing Parties as that term is defined in the
36 Master Settlement Agreement.

37 (9) 'Tobacco Product Manufacturer' means an entity that after the effective
38 date of this Article directly (and not exclusively through any affiliate):

39 a. Manufactures cigarettes anywhere that such manufacturer intends
40 to be sold in the United States, including cigarettes intended to be
41 sold in the United States through an importer (except where such
42 importer is an original participating manufacturer, as that term is
43 defined in the Master Settlement Agreement, that will be

1 responsible for the payments under the Master Settlement
2 Agreement with respect to such cigarettes as a result of the
3 provisions of subsection II(mm) of the Master Settlement
4 Agreement and that pays the taxes specified in subsection II(z) of
5 the Master Settlement Agreement, and provided that the
6 manufacturer of such cigarettes does not market or advertise such
7 cigarettes in the United States);

8 b. Is the first purchaser anywhere for resale in the United States of
9 cigarettes manufactured anywhere that the manufacturer does not
10 intend to be sold in the United States; or

11 c. Becomes a successor of an entity described in sub-subdivision a.
12 or b. of this subdivision.

13 The term 'Tobacco Product Manufacturer' shall not include an affiliate
14 of a tobacco product manufacturer unless such affiliate itself falls within
15 any of sub-subdivisions a. through c. of this subdivision.

16 (10) 'Units sold' means the number of individual cigarettes sold in the State
17 by the applicable tobacco product manufacturer (whether directly or
18 through a distributor, retailer, or similar intermediary or intermediaries)
19 during the year in question, as measured by excise taxes collected by the
20 State on packs (or 'roll-your-own' tobacco containers). The Secretary of
21 Revenue shall promulgate such rules as are necessary to ascertain the
22 amount of State excise tax paid on the cigarettes of such tobacco
23 product manufacturer for each year. In lieu of adopting rules, the
24 Secretary of Revenue may issue bulletins or directives requiring
25 taxpayers to submit to the Department of Revenue the information
26 necessary to make the required determination under this subdivision.

27 **"§ 66-291. Requirements.**

28 (a) Any tobacco product manufacturer selling cigarettes to consumers within the
29 State (whether directly or through a distributor, retailer, or similar intermediary or
30 intermediaries) after the effective date of this Article shall do one of the following:

31 (1) Become a participating manufacturer (as that term is defined in section
32 II(jj) of the Master Settlement Agreement) and generally perform its
33 financial obligations under the Master Settlement Agreement; or

34 (2) Place into a qualified escrow fund by April 15 of the year following the
35 year in question the following amounts (as such amounts are adjusted
36 for inflation):

37 a. 1999: \$.0094241 per unit sold after the effective date of this
38 Article.

39 b. 2000: \$.0104712 per unit sold.

40 c. For each of 2001 and 2002: \$.0136125 per unit sold.

41 d. For each of 2003 through 2006: \$.0167539 per unit sold.

42 e. For each of 2007 and each year thereafter: \$.0188482 per unit
43 sold.

1 (b) A tobacco product manufacturer that places funds into escrow pursuant to
2 subdivision (2) of section (a) of this subsection shall receive the interest or other
3 appreciation on such funds as earned. Such funds themselves shall be released from
4 escrow only under the following circumstances:

5 (1) To pay a judgment or settlement on any released claim brought against
6 such tobacco product manufacturer by the State or any releasing party
7 located or residing in the State. Funds shall be released from escrow
8 under this subdivision (i) in the order in which they were placed into
9 escrow and (ii) only to the extent and at the time necessary to make
10 payments required under such judgment or settlement;

11 (2) To the extent that a tobacco product manufacturer establishes that the
12 amount it was required to place into escrow in a particular year was
13 greater than the State's allocable share of the total payments that such
14 manufacturer would have been required to make in that year under the
15 Master Settlement Agreement (as determined pursuant to section
16 IX(i)(2) of the Master Settlement Agreement, and before any of the
17 adjustments or offsets described in section IX(i)(3) of that Agreement
18 other than the Inflation Adjustment) had it been a participating
19 manufacturer, the excess shall be released from escrow and revert back
20 to such tobacco product manufacturer; or

21 (3) To the extent not released from escrow under subdivisions (1) or (2) of
22 this subsection, funds shall be released from escrow and revert back to
23 such tobacco product manufacturer 25 years after the date on which they
24 were placed into escrow.

25 (c) Each tobacco product manufacturer that elects to place funds into escrow
26 pursuant to this section shall annually certify to the Attorney General that it is in
27 compliance with this section. The Attorney General may bring a civil action on behalf of
28 the State against any tobacco product manufacturer that fails to place into escrow the
29 funds required under this section. Any tobacco product manufacturer that fails in any
30 year to place into escrow the funds required under this section shall:

31 (1) Be required within 15 days to place such funds into escrow as shall
32 bring it into compliance with this section. The court, upon a finding of
33 a violation of this subsection, may impose a civil penalty (the clear
34 proceeds of which shall be paid to the Civil Penalty and Forfeiture Fund
35 in accordance with G.S. 115C-457.2) in an amount not to exceed five
36 percent (5%) of the amount improperly withheld from escrow per day of
37 the violation and in a total amount not to exceed one hundred percent
38 (100%) of the original amount improperly withheld from escrow;

39 (2) In the case of a knowing violation, be required within 15 days to place
40 such funds into escrow as shall bring it into compliance with this
41 section. The court, upon a finding of a knowing violation of subdivision
42 (2) of subsection (a) of this section, may impose a civil penalty (the
43 clear proceeds of which shall be paid to the Civil Penalty and Forfeiture

1 Fund in accordance with G.S. 115C-457.2) in an amount not to exceed
2 fifteen percent (15%) of the amount improperly withheld from escrow
3 per day of the violation and in a total amount not to exceed three
4 hundred percent (300%) of the original amount improperly withheld
5 from escrow; and

- 6 (3) In the case of a second knowing violation, be prohibited from selling
7 cigarettes to consumers within the State (whether directly or through a
8 distributor, retailer, or similar intermediary) for a period not to exceed
9 two years.

10 Each failure to make an annual deposit required under this section shall constitute a
11 separate violation."

12 Section 2. Part 1 of Article 2A of Chapter 105 of the General Statutes is
13 amended by adding the following new section to read:

14 "**§ 105-113.4B. Enforcement of Master Settlement Agreement Provisions.**

15 The Master Settlement Agreement between the states and the tobacco product
16 manufacturers, incorporated by reference into the consent decree referred to in S.L. 1999-
17 2, requires each state to diligently enforce Article 37 of Chapter 66 of the General
18 Statutes. The Office of the Attorney General and the Secretary of Revenue shall perform
19 the following responsibilities in enforcing Article 37:

- 20 (1) The Office of the Attorney General must give to the Secretary of
21 Revenue a list of the nonparticipating manufacturers under the Master
22 Settlement Agreement and the brand names of the products of the
23 nonparticipating manufacturers.
- 24 (2) The Office of the Attorney General must update the list provided under
25 subdivision (1) of this section when a nonparticipating manufacturer
26 becomes a participating manufacturer, another nonparticipating
27 manufacturer is identified, or more brands or products of
28 nonparticipating manufacturers are identified.
- 29 (3) The Secretary of Revenue must require the taxpayers of the tobacco
30 excise tax to identify the amount of tobacco products of
31 nonparticipating manufacturers sold by the taxpayers, and may impose
32 this requirement as provided in G.S. 66-290(10).
- 33 (4) The Secretary of Revenue must determine the amount of State tobacco
34 excise taxes attributable to the products of nonparticipating
35 manufacturers, based on the information provided by the taxpayers, and
36 must report this information to the Office of the Attorney General."

37 Section 3. This act is effective when it becomes law.