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Chapter No. 520

11/SS01/R1215CS.1

JN 1A3/56

SENATE BILL NO. 3020

Originated in Senate *Norma Hughes* Secretary

SENATE BILL NO. 3020

AN ACT TO AMEND SECTION 27-70-3, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN DEFINITIONS IN THE LAW RELATING TO FEES IMPOSED ON CERTAIN CIGARETTES; TO AMEND SECTIONS 27-70-5 AND 27-70-19, MISSISSIPPI CODE OF 1972, TO TRANSFER PAYMENT OF THE NONSETTLING-MANUFACTURER CIGARETTE FEE FROM MANUFACTURERS OF CIGARETTES TO DISTRIBUTORS OF CIGARETTES; TO DESIGNATE THE FEE AS THE TOBACCO EQUITY TAX; TO PROVIDE THAT THE TOBACCO EQUITY TAX SHALL NOT APPLY TO CIGARETTES THAT ARE SOLD, PURCHASED OR OTHERWISE DISTRIBUTED IN THIS STATE FOR SALE OUTSIDE THIS STATE; TO PROVIDE THAT A PERSON MAY NOT TRANSPORT FROM THIS STATE CERTAIN CIGARETTES FOR SALE IN ANOTHER STATE WITHOUT FIRST AFFIXING TO THE CIGARETTES THE STAMP REQUIRED BY THE STATE IN WHICH THE CIGARETTES ARE TO BE SOLD OR BY PAYING ANY OTHER EXCISE TAX ON THE CIGARETTES IMPOSED BY THE STATE IN WHICH THE CIGARETTES ARE TO BE SOLD UNLESS THIS PRACTICE IS PROHIBITED IN SUCH OTHER STATE; TO PROVIDE THAT THE TOBACCO EQUITY TAX SHALL BE IMPOSED, LEVIED AND ASSESSED ON EACH DISTRIBUTOR OF CIGARETTES AND SHALL BE DUE AND PAYABLE ON OR BEFORE THE 15TH DAY OF THE MONTH NEXT SUCCEEDING THE MONTH IN WHICH THE CIGARETTES ARE SOLD, USED, CONSUMED OR DISTRIBUTED IN THIS STATE; TO PROVIDE THAT CIGARETTE DISTRIBUTORS SHALL BE ELIGIBLE FOR A CREDIT UNDER CERTAIN CIRCUMSTANCES; TO PROVIDE PENALTIES FOR CIGARETTE DISTRIBUTORS WHO VIOLATE THE PROVISIONS OF THIS LAW; TO AMEND SECTION 27-69-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT INFORMATION IN PERMITS ISSUED UNDER THE TOBACCO TAX LAW MAY BE DISCLOSED TO THE HOLDER OF A WHOLESALER'S PERMIT AND TO LAW ENFORCEMENT AGENCIES OF THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE; TO AMEND SECTION 27-69-51, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF ANY WHOLESALER SUBJECT TO THE PROVISIONS OF THE TOBACCO TAX LAW SHALL CEASE TO DO BUSINESS IN THE STATE OF MISSISSIPPI, HE SHALL BE ALLOWED A REFUND OF THE TAX PAID ON CIGARETTES IN HIS POSSESSION; TO REPEAL SECTIONS 27-70-7, 27-70-11, 27-70-13, 27-70-15, 27-70-17 AND 27-70-21, MISSISSIPPI CODE OF 1972, WHICH IMPOSE A FEE ON NONSETTLING CIGARETTE MANUFACTURERS, PROVIDE FOR THE COMPUTATION, THE RATE OF INCREASE AND NOTICE OF THE FEE TO SUCH MANUFACTURERS, REQUIRE SUCH MANUFACTURERS TO CERTIFY THEIR COMPLIANCE WITH THE FEE REQUIREMENT, PROVIDE FOR A DIRECTORY OF CERTIFIED CIGARETTE MANUFACTURERS, REQUIRE CERTAIN CIGARETTE MANUFACTURERS TO PREPAY A FEE AND REQUIRE CERTAIN CIGARETTE MANUFACTURERS TO REGISTER WITH THE ATTORNEY GENERAL; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 27-70-3, Mississippi Code of 1972, is amended as follows:

27-70-3. As used in this chapter:

(a) "Brand family" means each style of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including "menthol," "lights," "kings" and "100s." The term includes any style of cigarette products that has a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes.

(b) "Cigarette" means any product that contains nicotine and is intended to be burned or heated under ordinary conditions of use. The term includes:

(i) A roll of tobacco wrapped in paper or another substance that does not contain tobacco;

(ii) Tobacco, in any form, that is functional in a product that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette; or

(iii) A roll of tobacco wrapped in any substance containing tobacco that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette.

(c) "Commissioner" means the Commissioner of Revenue of the Department of Revenue and his authorized agents and employees. * * *

(d) "Mail" means placing the document or item referred to in first-class United States mail, postage prepaid, addressed to the person to whom the document or item is to be sent at the last known address of that person.

(e) "Manufacturer" means a person that manufactures, fabricates or assembles cigarettes for sale or distribution. For

purposes of this chapter, the term includes a person that is the first importer into the United States of cigarettes manufactured outside the United States.

* * *

(f) "Tobacco settlement agreement" means any settlement agreement entered into by this state and one or more cigarette manufacturers in the case of Mike Moore, Attorney General, ex rel. State of Mississippi v. The American Tobacco Company et al., Chancery Court of Jackson County, Mississippi, Cause No. 94-1429, and all subsequent amendments thereto.

(g) "Distributor" shall have the same meaning ascribed to that term in Section 27-69-3.

SECTION 2. Section 27-70-5, Mississippi Code of 1972, is amended as follows:

27-70-5. (1) (a) In addition to the tax imposed under Section 27-69-13, and except as provided by subsection (2) of this section, there is imposed a tobacco equity tax in the amount of One and Thirty-five One Hundredths Cent (\$0.0135) per cigarette on all cigarettes subject to the tax imposed under Section 27-69-13.

(b) On July 1 of each year, the tax prescribed by subsection (1) of this section shall increase by the greater of:

(i) Three percent (3%); or

(ii) The percentage increase in the most recent annual revised Consumer Price Index for all Urban Consumers, as published by the Federal Bureau of Labor Statistics of the United States Department of Labor.

(c) The revenue collected from the tax imposed by this section shall be deposited into the State General Fund.

(d) The cigarettes manufactured by any manufacturer which is a party to the tobacco settlement agreement shall be exempt from the imposition of the tobacco equity tax provided for herein.

(2) The tax imposed by this chapter does not apply to cigarettes that are sold, purchased or otherwise distributed in this state for sale outside of this state. A person may not transport or cause to be transported from this state such cigarettes for retail sale in another state without first affixing to the cigarettes the stamp required by the state in which the cigarettes are to be sold or by paying any other excise tax on the cigarettes imposed by the state in which the cigarettes are to be sold; however, a person shall not be required to affix a tax stamp of another state or pay the excise tax of another state prior to transporting the cigarettes out of this state if the other state prohibits that action or if the cigarettes are being sold to a wholesaler licensed by that state.

(3) The tax imposed by this chapter is in addition to any other privilege, license, fee, assessment or tax required or imposed by state law, including, but not limited to, the taxes levied by Section 27-69-13.

(4) The tax imposed by this chapter is imposed, levied and assessed on each distributor of cigarettes. The tax shall be due and payable on or before the fifteenth day of the month next succeeding the month in which the stamp is required to be affixed to the cigarettes under the Tobacco Tax Law. The distributor shall make a return showing the number of such cigarettes, the brand family, and the manufacturer. The return shall also include the quantity of cigarettes, by brand family, transported or caused to be transported outside of Mississippi in the preceding month as well as the name and address of the recipient of the cigarettes transported outside of Mississippi.

(5) The distributor is eligible for a credit if cigarettes for which the distributor had previously paid the tax under this chapter were returned to the distributor.

SECTION 3. Section 27-70-19, Mississippi Code of 1972, is amended as follows:

27-70-19. (1) If any distributor subject to the provisions of this chapter shall be found to have failed to properly report or pay the tax required under this chapter, or to have violated any of the provisions of this chapter or any rules or regulations promulgated by the commissioner under the authority of this chapter, there shall be collected from such distributor, in addition to the tax that may be due, a penalty of One Thousand Dollars (\$1,000.00) per violation, and the commissioner or his duly authorized representative may make immediate demand upon the distributor for the payment of all such taxes and penalties.

(2) If there is a second violation by a distributor of this chapter or any rule or regulation promulgated by the commissioner under the authority of this chapter, the commissioner, in addition to any other penalty, may revoke any permit which may have been issued to the distributor.

(3) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of that law, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for the taxes under this chapter, and the commissioner shall exercise all the power and authority and perform all duties with respect to taxpayers under this chapter as are provided under the Mississippi Sales Tax Law, except where there is a conflict, in which case this chapter shall control.

* * *

SECTION 4. Section 27-69-5, Mississippi Code of 1972, is amended as follows:

27-69-5. (1) Every distributor, wholesaler, dealer or retailer who desires to become engaged in the sale or use of tobacco upon which a tax is required to be paid shall file with the commissioner an application for a permit to engage in such business. The application for a permit shall be filed on blanks

to be furnished by the commissioner for that purpose. The application must be subscribed and sworn to by the person owning the business, or having an ownership interest in the business. If the applicant is a corporation, a duly authorized agent shall execute the application. The application shall show the name of such person, and in case of partnership, the name of each partner * * *, the person's post office address, the location of the place of business to which the permit shall apply, and the nature of the business in which engaged, and any other information the commissioner may require. No distributor, wholesaler, dealer or retailer shall sell any tobacco until the application has been filed, the prescribed permit fee paid, and the permit obtained. Except as otherwise provided in this subsection, the permit shall expire on January 31 of each year. However, a retail permit shall continue in force during the time that the permit holder to whom it is issued continues in the same business at the same location unless such permit is revoked by the commissioner for cause or is revoked pursuant to any provision of Section 27-70-1 et seq., Section 75-23-1 et seq. or the Mississippi Juvenile Tobacco Access Prevention Act in Sections 97-32-1 through 97-32-23.

(2) An application shall be filed, and a permit obtained for each place of business owned or operated by each distributor, wholesaler, dealer or retailer.

(3) Upon receipt of the application and any permit fee * * * provided for in this chapter, the commissioner may issue to every distributor, wholesaler, dealer or retailer, for the place of business designated, a nonassignable permit, authorizing the sale or use of tobacco in the state. The permit shall provide that it is revocable, and may be forfeited or suspended upon violation of any provision of this chapter, the Mississippi Tobacco Youth Access Prevention Act of 1997, Section 27-70-7 et seq., Section 75-23-1 et seq. or any rule or regulation adopted by the commissioner. If the permit is revoked or suspended, the

distributor, wholesaler, dealer or retailer shall not sell any tobacco from the place of business until a new permit is granted, or the suspension of the old permit removed.

(4) A permit cannot be transferred from one person to another, and the permit shall at all times be publicly displayed by the distributor, wholesaler, dealer or retailer in his place of business so as to be seen easily by the public. A permit may be refused to any person previously convicted of violations of this chapter or Section 27-70-1 et seq.

(5) Information contained on a permit may be disclosed to the holder of a wholesaler's permit, to law enforcement agencies of the federal government, state or any political subdivision of the state, and to the Attorney General and federal agencies responsible for administering tobacco laws.

SECTION 5. Section 27-69-51, Mississippi Code of 1972, is amended as follows:

27-69-51. (1) If any wholesaler subject to the provisions of this chapter shall sell or ship or transport any cigarettes into another state to a regular dealer, he shall be allowed a refund of the tax paid on those cigarettes. The refund shall be made by way of new stamps issued to him by the commissioner upon application accompanied by sworn acknowledgment from the purchaser, showing the units, items and date of delivery, the acknowledgment to state that he has received such cigarettes, and that stamps of an aggregate value, of which refund is requested, were on the cigarettes so acknowledged; provided further, that the acknowledgment shall show that the stamps affixed to the cigarettes, for which refund is requested, have had the cancellation marked "void" by ink, or by imprinting.

(2) If any wholesaler subject to the provisions of this chapter shall cease to do business in the State of Mississippi, he shall be allowed a refund of the tax paid on cigarettes in his possession. Such refund request shall be accompanied by a sworn

acknowledgement that the wholesaler is no longer doing business in the State of Mississippi, and the acknowledgment must state that stamps with a value in the amount of the refund being requested are being returned to the Department of Revenue before use.

SECTION 6. Sections 27-70-7, 27-70-11, 27-70-13, 27-70-15, 27-70-17 and 27-70-21, Mississippi Code of 1972, which impose a fee on nonsettling cigarette manufacturers, provide for the computation, the rate of increase and notice of the fee to such manufacturers, require such manufacturers to certify their compliance with the fee requirement, provide for a directory of certified cigarette manufacturers, require certain cigarette manufacturers to prepay a fee and require certain cigarette manufacturers to register with the Attorney General, are repealed.

SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act.

SECTION 8. This act shall take effect and be in force from
and after July 1, 2011.

PASSED BY THE SENATE
March 27, 2011



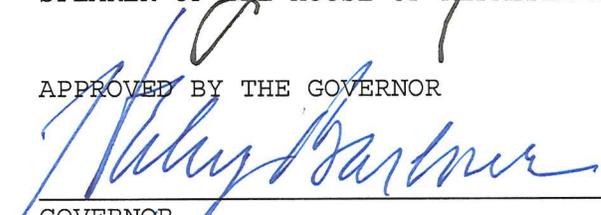
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 28, 2011



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR
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