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HOUSE BILL 2038

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Gombosky and McIntire; by request of Attorney General

Read first time 02/20/2003. Referred to Committee on Finance.

1 AN ACT Relating to refunds from escrow for certain tobacco  
2 manufacturers; amending RCW 70.157.020; and adding a new section to  
3 chapter 70.157 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 70.157.020 and 1999 c 393 s 3 are each amended to read  
6 as follows:

7 Any tobacco product manufacturer selling cigarettes to consumers  
8 within the State (whether directly or through a distributor, retailer  
9 or similar intermediary or intermediaries) after May 18, 1999, shall do  
10 one of the following:

11 (a) become a participating manufacturer (as that term is defined in  
12 section II(jj) of the Master Settlement Agreement) and generally  
13 perform its financial obligations under the Master Settlement  
14 Agreement; or

15 (b)(1) place into a qualified escrow fund by April 15 of the year  
16 following the year in question the following amounts (as such amounts  
17 are adjusted for inflation)--

18 1999: \$.0094241 per unit sold after May 18, 1999;

19 2000: \$.0104712 per unit sold;

1 for each of 2001 and 2002: \$.0136125 per unit sold;  
2 for each of 2003 through 2006: \$.0167539 per unit sold;  
3 for each of 2007 and each year thereafter: \$.0188482 per unit  
4 sold.

5 (2) A tobacco product manufacturer that places funds into escrow  
6 pursuant to paragraph (1) shall receive the interest or other  
7 appreciation on such funds as earned. Such funds themselves shall be  
8 released from escrow only under the following circumstances--

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

15 (B) to the extent that a tobacco product manufacturer establishes  
16 that the amount it was required to place into escrow on account of  
17 units sold in the state in a particular year was greater than the  
18 ~~((State's allocable share of the total payments that such manufacturer~~  
19 ~~would have been required to make in that year under the Master~~  
20 ~~Settlement Agreement (as determined pursuant to section IX(i)(2) of the~~  
21 ~~Master Settlement Agreement, and before any of the adjustments or~~  
22 ~~offsets described in section IX(i)(3) of that Agreement other than the~~  
23 ~~Inflation Adjustment))) Master Settlement Agreement payments, as  
24 determined pursuant to section IX(i) of that Agreement including after  
25 final determination of all adjustments, that such manufacturer would  
26 have been required to make on account of such units sold, had it been  
27 a Participating Manufacturer, the excess shall be released from escrow  
28 and revert back to such tobacco product manufacturer; or~~

29 (C) to the extent not released from escrow under subparagraphs (A)  
30 or (B), funds shall be released from escrow and revert back to such  
31 tobacco product manufacturer twenty-five years after the date on which  
32 they were placed into escrow.

33 (3) Each tobacco product manufacturer that elects to place funds  
34 into escrow pursuant to this subsection shall annually certify to the  
35 Attorney General that it is in compliance with this subsection. The  
36 Attorney General may bring a civil action on behalf of the State  
37 against any tobacco product manufacturer that fails to place into

1 escrow the funds required under this section. Any tobacco product  
2 manufacturer that fails in any year to place into escrow the funds  
3 required under this section shall--

4 (A) be required within 15 days to place such funds into escrow as  
5 shall bring it into compliance with this section. The court, upon a  
6 finding of a violation of this subsection, may impose a civil penalty  
7 to be paid to the general fund of the state in an amount not to exceed  
8 5 percent of the amount improperly withheld from escrow per day of the  
9 violation and in a total amount not to exceed 100 percent of the  
10 original amount improperly withheld from escrow;

11 (B) in the case of a knowing violation, be required within 15 days  
12 to place such funds into escrow as shall bring it into compliance with  
13 this section. The court, upon a finding of a knowing violation of this  
14 subsection, may impose a civil penalty to be paid to the general fund  
15 of the state in an amount not to exceed 15 percent of the amount  
16 improperly withheld from escrow per day of the violation and in a total  
17 amount not to exceed 300 percent of the original amount improperly  
18 withheld from escrow; and

19 (C) in the case of a second knowing violation, be prohibited from  
20 selling cigarettes to consumers within the State (whether directly or  
21 through a distributor, retailer or similar intermediary) for a period  
22 not to exceed 2 years.

23 Each failure to make an annual deposit required under this section  
24 shall constitute a separate violation. The violator shall also pay the  
25 State's costs and attorney's fees incurred during a successful  
26 prosecution under this paragraph (3).

27 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.157 RCW  
28 to read as follows:

29 If this act is held by a court of competent jurisdiction to be  
30 unconstitutional, then RCW 70.157.020(b)(2)(B) shall be repealed in its  
31 entirety. If RCW 70.157.020(b)(2)(B) shall thereafter be held by a  
32 court of competent jurisdiction to be unconstitutional, then this act  
33 shall be repealed, and RCW 70.157.020(b)(2)(B) be restored as if no  
34 amendments had been made. Neither any holding of unconstitutionality  
35 nor the repeal of RCW 70.157.020(b)(2)(B) shall affect, impair, or  
36 invalidate any other portion of RCW 70.157.020 or the application of

1 that section to any other person or circumstance, and the remaining  
2 portions of RCW 70.157.020 shall at all times continue in full force  
3 and effect.

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