

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4
5 By: Senator B. Johnson
6
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As Engrossed: S1/31/05
A Bill

SENATE BILL 118

8 **For An Act To Be Entitled**

9 AN ACT TO AMEND ARKANSAS CODE § 26-57-261
10 PERTAINING TO REFUNDS OF INTEREST FROM DEPOSITS
11 BY TOBACCO PRODUCT MANUFACTURERS UNDER THE MASTER
12 SETTLEMENT AGREEMENT; AND FOR OTHER PURPOSES.
13

14 **Subtitle**

15 AN ACT TO AMEND ARKANSAS CODE § 26-57-
16 261.
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18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 26-57-261(2)(B)(ii) is amended to read as
22 follows:

23 (ii) To the extent that a tobacco product
24 manufacturer establishes that the amount it was required to place into escrow
25 on account of units sold in the state in a particular year was greater than
26 ~~the state's allocable share of the total payments that such manufacturer~~
27 ~~would have been required to make in that year under the Master Settlement~~
28 ~~Agreement, as determined pursuant to section IX(i)(2) of the Master~~
29 ~~Settlement Agreement and before any of the adjustments or offsets described~~
30 ~~in section IX(i)(3) of that agreement other than the inflation adjustment,~~
31 the Master Settlement Agreement payments, as determined under section IX(i)
32 of the Master Settlement Agreement including after final determination of all
33 adjustments, that the manufacturer would have been required to make on
34 account of the units sold had it been a participating manufacturer, the
35 excess shall be released from escrow and revert back to such tobacco product
36 manufacturer; or



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2 SECTION 2. Arkansas Code § 26-57-1303(c), concerning the prohibition
3 against stamping, sale, or import of cigarettes not in the directory, is
4 amended to read as follows:

5 (c) Prohibition Against Stamping, Sale, or Import of Cigarettes Not in
6 Directory.

7 (1) It is unlawful for any person or entity to:

8 (A) Affix a tax stamp to a package or other container of
9 cigarettes of a tobacco product manufacturer or brand family that the person
10 or entity knows is not included in the directory maintained by the Attorney
11 General pursuant to subsection (b) of this section; or

12 (B) Sell, offer, or possess for sale in this state, or
13 import for personal consumption in this state, cigarettes of a tobacco
14 product manufacturer or brand family that the person or entity knows is not
15 included in the directory maintained by the Attorney General pursuant to
16 subsection (b) of this section.

17 (2) Persons and entities are deemed to have received notice that
18 cigarettes of a tobacco product manufacturer or a brand family are not
19 included in the directory maintained by the Attorney General pursuant to
20 subsection (b) of this section at the time the Attorney General's website
21 fails to list any such cigarettes in the directory or at the time the
22 Attorney General removes the cigarettes from the directory.

23 (3) A person or entity purchasing cigarettes for resale shall
24 not be in violation of this subchapter if:

25 (A) At the time of purchase the manufacturer and brand
26 families of the cigarettes are included in the directory maintained by the
27 Attorney General pursuant to subsection (b) of this section and the
28 cigarettes are lawfully stamped and sold within ~~fourteen (14)~~twenty-one (21)
29 days of the date the manufacturer and brand families were removed from the
30 directory; or

31 (B) In the case of a retailer, the cigarettes are sold or
32 delivered to retail customers within ~~fourteen (14)~~twenty-one (21) days after
33 receipt of delivery of such cigarettes from a wholesaler so long as the
34 cigarettes in question were lawfully purchased from the same wholesaler.

35 (4) No brand families may be purchased by or delivered to a
36 wholesaler once the manufacturer and brand families are removed from the

1 directory.

2 ~~(4)(5)~~ Any manufacturer, wholesaler, or retailer selling
3 cigarettes for resale of a manufacturer or brand family that has been removed
4 from the directory maintained by the Attorney General pursuant to subsection
5 (b) of this section shall notify the purchaser of such cigarettes of that
6 fact at the time of delivery of the cigarettes.

7 ~~(5)(6)~~(A) Unless otherwise provided by contract or purchase
8 agreement, a purchaser shall be entitled to a refund of the purchase price
9 from the manufacturer, wholesaler, or retailer from whom the cigarettes were
10 purchased of any cigarettes that are the product of a manufacturer or a brand
11 family that has been removed from the directory maintained by the Attorney
12 General pursuant to subsection (b) of this section.

13 (B) The Department of Finance and Administration may by
14 regulation provide for a refund of the price of tax stamps that have been
15 lawfully affixed to cigarettes that may not be sold under this subsection.
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17 SECTION 3. Severability.

18 (a) If this act or any portion of the amendment to Arkansas Code § 26-
19 57-261(2)(B)(ii) made by this act is held by a court of competent
20 jurisdiction to be unconstitutional, then Arkansas Code § 26-57-
21 261(2)(B)(ii) shall be deemed to be repealed in its entirety.

22 (b) If Arkansas Code § 26-57-261(2)(B) shall thereafter be held by a
23 court of competent jurisdiction to be unconstitutional, then this act shall
24 be deemed repealed and Arkansas Code § 26-57-261(2)(B)(ii) be restored as if
25 the amendment made by this act had not been made.

26 (c) Neither any holding of unconstitutionality nor the repeal of
27 Arkansas Code § 26-57-261(2)(B)(ii) shall affect, impair, or invalidate any
28 other portion of Arkansas Code § 26-57-261 or the application of Arkansas
29 Code § 26-57-261 to any other person or circumstance, and the remaining
30 portions of Arkansas Code § 26-57-261 shall continue in full force and
31 effect.

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33 SECTION 4. EFFECTIVE DATE. Section 1 shall apply to all funds placed
34 into, due to be placed into, or being held in a qualified escrow account
35 pursuant to Arkansas Code § 26-57-261 on or after March 31, 2005.
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