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HOUSE BILL NO. 1221

Offered January 16, 2002

A BILL to amend and reenact §§ 58.1-3, 58.1-1009, 58.1-1033, and 58.1-1034 of the Code of Virginia, relating to sale of cigarettes produced for export.

Patron—Albo

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3, 58.1-1009, 58.1-1033, and 58.1-1034 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3. Secrecy of information; penalties.

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to § 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;

2. Acts performed or words spoken or published in the line of duty under the law;

3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;

4. The sales price, date of construction, physical dimensions or characteristics of real property, or any information required for building permits;

5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent.

B. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income reported by persons on their state income tax returns who have applied for public assistance benefits as defined in § 63.1-87; (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the Alcoholic Beverage Control Board, upon entering into a written agreement, such tax information as may

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59 be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic
60 beverage control laws; (vii) provide to the Director of the State Lottery Department such tax information
61 as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to
62 the Department of the Treasury for its confidential use such tax information as may be necessary to
63 facilitate the location of owners of unclaimed property; (ix) provide to the State Corporation
64 Commission, upon entering into a written agreement, such tax information as may be necessary to
65 facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive
66 Director of the Potomac and Rappahannock Transportation Commission for its confidential use such tax
67 information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi)
68 provide to the Executive Secretary of the Charitable Gaming Commission such tax information as may
69 be necessary to identify those applicants for registration as a supplier of charitable gaming supplies who
70 have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing
71 and Community Development for its confidential use such tax information as may be necessary to
72 facilitate the administration of the Enterprise Zone Act (§ 59.1-270 et seq.); (xiii) provide current name
73 and address information to private collectors entering into a written agreement with the Tax
74 Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its
75 political subdivisions; however, the Tax Commissioner is not authorized to provide such information to
76 a private collector who has used or disseminated in an unauthorized or prohibited manner any such
77 information previously provided to such collector; and (xiv) provide current name and address
78 information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of
79 cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring
80 an action for injunction or other equitable relief for violation of Chapter 40.1, Enforcement of Illegal
81 Sale or Distribution of Cigarettes Act in accordance with § 58.1-1009. The Tax Commissioner is further
82 authorized to enter into written agreements with duly constituted tax officials of other states and of the
83 United States for the inspection of tax returns, the making of audits, and the exchange of information
84 relating to any tax administered by the Department of Taxation. Any person to whom tax information is
85 divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as
86 though he were a tax official.

87 D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the
88 commissioner of revenue or other assessing official is authorized to (i) provide, upon written request
89 stating the reason for such request, the chief executive officer of any county or city with information
90 furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of
91 any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the
92 local sales and use tax revenues payable to the county or city; (ii) provide to the Department of
93 Professional and Occupational Regulation for its confidential use the name, address, and amount of gross
94 receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a
95 profession or occupation administered by the Department of Professional and Occupational Regulation,
96 only after the Department of Professional and Occupational Regulation exhausts all other means of
97 obtaining such information; and (iii) provide to any representative of a condominium unit owners'
98 association, property owners' association or real estate cooperative association, or to the owner of
99 property governed by any such association, the names and addresses of parties having a security interest
100 in real property governed by any such association; however, such information shall be released only
101 upon written request stating the reason for such request, which reason shall be limited to proposing or
102 opposing changes to the governing documents of the association, and any information received by any
103 person under this subsection shall be used only for the reason stated in the written request. The treasurer
104 or other local assessing official may require any person requesting information pursuant to clause (iii) of
105 this subsection to pay the reasonable cost of providing such information. Any person to whom tax
106 information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties
107 prescribed herein as though he were a tax official.

108 This section shall not be construed to prohibit a local tax official from imprinting or displaying on a
109 motor vehicle local license decal the year, make, and model and any other legal identification
110 information about the particular motor vehicle for which that local license decal is assigned.

111 E. Notwithstanding any other provisions of law, state agencies and any other administrative or
112 regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon
113 written request, the name, address, and social security number of a taxpayer, necessary for the
114 performance of the Commissioner's official duties regarding the administration and enforcement of laws
115 within the jurisdiction of the Department of Taxation. The receipt of information by the Tax
116 Commissioner or his agent which may be deemed taxpayer information shall not relieve the
117 Commissioner of the obligations under this section.

118 F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published
119 any confidential tax document which he knows or has reason to know is a confidential tax document. A
120 confidential tax document is any correspondence, document, or tax return that is prohibited from being

divulged by subsection A, B, C, or D of this section or by § 59.1-282.4. This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

§ 58.1-1009. Preparation, design and sale of stamps; unlawful sale of stamps a felony.

The Department is hereby authorized and directed to have prepared and to sell stamps suitable for denoting the tax on all cigarettes. The Department shall design, adopt and promulgate the form and kind of stamps to be used. Stamps so adopted and promulgated shall be known as and termed "Virginia revenue stamps," and in any information or indictment, it shall be sufficient to describe the stamps as "Virginia revenue stamps."

Any person other than the Department who sells such revenue stamps, not affixed to cigarettes sold and delivered by them, whether the said stamps be genuine or counterfeit, shall be guilty of a Class 6 felony. When wholesalers have qualified as such with the Department, as provided in § 58.1-1011, and purchase stamps as prescribed herein for use on taxable cigarettes sold and delivered by them, the Department shall allow on such sales of revenue stamps a discount of two and one-half cents per carton. As used herein "carton" shall mean ten packs of cigarettes, each containing twenty cigarettes. All stamps prescribed by the Department shall be designed and furnished in such a fashion as to permit identification of the wholesale dealer or retail dealer that affixed the stamp to the particular package of cigarettes, by means of a serial number or other mark on the stamp. *The Department shall maintain for not less than three years information identifying which wholesale dealer or retail dealer affixed the tax stamp to each package of cigarettes. This identifying information must be available for public inspection and shall not be confidential or exempt from disclosure to the public under § 58.1-3.*

§ 58.1-1033. Prohibited acts.

It shall be unlawful for any person to:

1. Sell or distribute in the Commonwealth, acquire, hold, own, possess, or transport, for sale or distribution in the Commonwealth, or import, or cause to be imported, into the Commonwealth for sale or distribution in the Commonwealth (i) any cigarettes the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only," "U.S. Tax-Exempt," "For Use Outside U.S.," or similar wording; (ii) any cigarettes the package of which does not comply with (a) all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333, or (b) all federal trademark and copyright laws; (iii) any cigarettes imported into the United States in violation of 26 U.S.C. § 5754 (*relating to previously exported tobacco products*), or 19 U.S.C. §1681-1681b (*relating to imports of certain cigarettes*), or any other federal law or regulations; (iv) any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States; or (v) any cigarettes for which there has not been submitted to the Secretary of the U.S. Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1335a;

2. Alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure (i) any statement, label, stamp, sticker, or notice described in clause (i) of subdivision 1 or (ii) any health warning that is not specified in, or does not conform with the requirements of, the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333; or

3. Affix any stamp required pursuant to Chapter 10 (§ 58.1-1000 et seq.) of this title to the package of any cigarettes described in subdivision 1 of this section or altered in violation of subdivision 2 of this section.

§ 58.1-1034. Records to be kept; filing with Department.

A. Any person who acquires, holds, owns, possesses, transports in or imports into the Commonwealth cigarettes which are subject to this chapter shall, with respect to such cigarettes, maintain and keep all records required pursuant to Chapter 10 (§ 58.1-1000 et seq.) of this title.

B. Between the first and tenth business day of each month, each person licensed to affix the state tax stamp to cigarettes shall file with the Department, for all cigarettes imported into the United States to which such person has affixed the tax stamp in the preceding month, (i) a copy of the permit issued pursuant to the Internal Revenue Code, 26 U.S.C. § 5713, to the person importing such cigarettes into the United States allowing such person to import such cigarettes, and the customs form containing, with respect to such cigarettes, the internal revenue tax information required by the U. S. Bureau of Alcohol, Tobacco and Firearms; (ii) ~~a statement, signed by such person under the penalty of perjury, which shall be treated as confidential by the Department and shall be exempt from disclosure under the Virginia~~

182 Freedom of Information Act (§ ~~2.2-3700~~ et seq.), identifying the brand and brand styles of all such
183 cigarettes; the quantity of each brand style of such cigarettes; the supplier of such cigarettes; and the
184 person or persons, if any, to whom such cigarettes have been conveyed for resale *copies of the customs*
185 *certificates with respect to such cigarettes required to be submitted by 19 U.S.C. § 1681a (c)*; and (iii) a
186 statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that
187 the manufacturer or importer has complied with the package health warning and ingredient reporting
188 requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1333 and 1335a, with
189 respect to such cigarettes and §§ 3.1-336.1 and 3.1-336.2 of the Code of Virginia, including a statement
190 indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the
191 meaning of § 3.1-336.1.