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HOUSE BILL NO. 1566

Offered January 8, 2003

Prefiled December 20, 2002

A BILL to amend and reenact §§ 58.1-603, 58.1-604, 58.1-611.1, 58.1-1000 through 58.1-1010, 58.1-1012, 58.1-1013, 58.1-1014, 58.1-1017, 58.1-3830, and 58.1-3832 of the Code of Virginia, and to repeal § 58.1-3831 of the Code of Virginia, relating to taxation; the Revenue Revitalization Act of 2003.

Patron—Hamilton

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-603, 58.1-604, 58.1-611.1, 58.1-1000 through 58.1-1010, 58.1-1012, 58.1-1013, 58.1-1014, 58.1-1017, 58.1-3830, and 58.1-3832 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-603. Imposition of sales tax.

~~There~~**A.** *Except as provided in subsection B there* is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth, in the amount of three and one-half percent:

1. Of the gross sales price of each item or article of tangible personal property when sold at retail or distributed in this Commonwealth.

2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to such business.

3. Of the cost price of each item or article of tangible personal property stored in this Commonwealth for use or consumption in this Commonwealth.

4. Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in § 58.1-602.

5. Of the gross sales of any services which are expressly stated as taxable within this chapter.

B. *There is hereby levied and imposed upon every person who engages in the business of selling at retail or distributing alcohol, beer, or wine, a license or privilege tax in the amount of 9 percent of the gross sales price of each item of alcohol, beer, or wine, in lieu of the tax rate imposed under subsection A. The revenues generated by such tax shall be collected by the Department of Taxation and deposited into the general fund until such time as the Public Safety Trust Fund is created following the approval by a majority of the voters in a general election of a constitutional amendment requiring the Fund's creation, at which time such revenues shall be deposited into the Fund.*

§ 58.1-604. Imposition of use tax.

~~There~~**A.** *Except as provided in subsection B, there* is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of three and one-half percent:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property which has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).

2. Of the cost price of each item or article of tangible personal property stored outside this Commonwealth for use or consumption in this Commonwealth.

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59 3. A transaction taxed under § 58.1-603 shall not also be taxed under this section, nor shall the same
60 transaction be taxed more than once under either section.

61 4. The use tax shall not apply with respect to the use of any article of tangible personal property
62 brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use,
63 while within this Commonwealth.

64 5. The use tax shall not apply to out-of-state mail order catalog purchases totaling \$100 or less
65 during any calendar year.

66 *B. There is hereby levied and imposed a tax upon the use or consumption of alcohol, beer, and wine*
67 *in this Commonwealth, or the storage of such property outside the Commonwealth for use or*
68 *consumption in this Commonwealth, in the amount of 9 percent of the cost price of each item of*
69 *alcohol, beer, and wine, in lieu of the tax rate imposed under subsection A. The revenues generated by*
70 *such tax shall be collected by the Department of Taxation and deposited into the general fund until such*
71 *time as the Public Safety Trust Fund is created following the approval by a majority of the voters in a*
72 *general election of a constitutional amendment requiring the Fund's creation, at which time such*
73 *revenues shall be deposited into the Fund.*

74 § 58.1-611.1. Rate of tax on sales of food purchased for human consumption; Food Tax Reduction
75 Program.

76 A. Subject to the conditions of subsections D and E, *On and after July 1, 2004*, the tax imposed by
77 §§ 58.1-603 and 58.1-604 on food purchased for human consumption shall be levied and distributed as
78 follows:

79 1. From January 1, 2000, through March 31, 2001, the tax rate on such food shall be three percent
80 of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from
81 the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638; (ii)
82 the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C
83 and D of § 58.1-638; and (iii) the revenue from the tax at the rate of one and one-half percent shall be
84 used for general fund purposes.

85 2. From April 1, 2001, through March 31, 2002, the tax rate on such food shall be two and one-half
86 percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue
87 from the tax at the rate of one-half percent shall be distributed as provided in subsection A of
88 § 58.1-638; (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in
89 subsections B, C and D of § 58.1-638; and (iii) the revenue from the tax at the rate of one percent shall
90 be used for general fund purposes.

91 3. From April 1, 2002, through March 31, 2003, the tax rate on such food shall be two percent of
92 the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the
93 tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638; (ii) the
94 revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and
95 D of § 58.1-638; and (iii) the revenue from the tax at the rate of one-half percent shall be used for
96 general fund purposes.

97 4. *On and after April 1, 2003*, the tax rate on such food shall be *at a rate of one 1* and one-half
98 percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue
99 from the tax at the rate of one-half percent shall be distributed as provided in subsection A of
100 § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in
101 subsections B, C and D of § 58.1-638.

102 B. The provisions of this section shall not affect the imposition of tax on food purchased for human
103 consumption pursuant to §§ 58.1-605 and 58.1-606.

104 C. As used in this section, "food purchased for human consumption" has the same meaning as "food"
105 defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted
106 pursuant to that Act, except it shall not include seeds and plants which produce food for human
107 consumption. For the purpose of this section, "food purchased for human consumption" shall not include
108 food sold by any retail establishment where the gross receipts derived from the sale of food prepared by
109 such retail establishment for immediate consumption on or off the premises of the retail establishment
110 constitutes more than ~~eighty~~ 80 percent of the total gross receipts of that retail establishment, including
111 but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the
112 premises of that retail establishment. For purposes of this section, "retail establishment" means each
113 place of business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a
114 certificate of registration pursuant to § 58.1-613.

115 D. Notwithstanding the tax rates set forth in subsection A, the rate of tax on sales of food purchased
116 for human consumption for any twelve-month period beginning on or after April 1, 2001, shall not be
117 reduced below the rate then in effect for the Commonwealth's current fiscal year if:

118 1. Actual general fund revenues for the fiscal year preceding a fiscal year in which a rate reduction
119 is contemplated in subsection A do not exceed the official general fund revenue estimates for such
120 preceding fiscal year, as estimated in the most recently enacted and approved general appropriation act;

by at least one percent; or

2. Any of the events listed in subsection C of § 58.1-3524 or subsection B of § 58.1-3536 have occurred during the then current fiscal year.

E. If the tax rate on food purchased for human consumption remains the same for the period January 1, 2000, through March 31, 2001, and the subsequent twelve-month period beginning on April 1, 2001, or with respect to any consecutive twelve-month periods beginning on and after April 1, 2001, the tax rate on such food shall remain the same unless none of the conditions described in subsection D have occurred, in which event the tax rate on food purchased for human consumption for the immediately following twelve-month period shall be equal to the next lowest tax rate listed in subsection A.

FD. There is hereby created on the books of the Comptroller a nonreverting fund entitled the Food Tax Reserve Fund which shall be used solely for the statutory purposes of the Food Tax Reduction Program as established by this section, and as may be provided for in the general appropriation act. For the purpose of the Comptroller's preliminary and final annual reports required by § 2.2-813, all balances remaining in the Fund on June 30 of each year shall be considered a portion of the fund balance of the general fund of the state treasury.

G. The taxes imposed pursuant to §§ 58.1-604.4 and 58.1-604.5 shall not apply to food purchased for human consumption.

§ 58.1-1000. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Retail dealer" includes every person other than a wholesale dealer, as defined in this section, who sells or offers for sale any ~~cigarettes~~ *tobacco products*.

"Retail sale" or "sale at retail" includes all sales except sales by wholesalers to retail dealers or other wholesalers for resale.

"Stamps" means the stamp or stamps by the use of which the tax levied under this chapter is paid and shall be officially designated as Virginia revenue stamps. The Department is hereby authorized to provide for the use of any type of stamp which will effectuate the purposes of this chapter including but not limited to decalcomania and metering devices.

"Storage" means any keeping or retention in this Commonwealth of ~~cigarettes~~ *tobacco products* for any purpose except sale in the regular course of business or subsequent use solely outside this Commonwealth.

"Tobacco products" means cigarettes, cigars, chewing tobacco, smoking tobacco, and snuff.

"Use" means the exercise of any right or power over ~~cigarettes~~ *tobacco products* incident to the ownership thereof or by any transaction where possession is given, except that it shall not include the sale of ~~cigarettes~~ *tobacco products* in the regular course of business.

"Wholesale dealer" includes persons who sell ~~cigarettes~~ *tobacco products* at wholesale only to retail dealers for the purpose of resale only, or who sell at wholesale to institutional, commercial or industrial users. The phrase shall also include chain store distribution centers or houses which distribute ~~cigarettes~~ *tobacco products* to their stores for sale at retail.

§ 58.1-1001. Tax levied; rate.

A. In addition to all other taxes now imposed by law, every person within this Commonwealth who sells, stores or receives ~~cigarettes~~ *tobacco products* made of tobacco or any substitute thereof, for the purpose of distribution to any person within this Commonwealth, shall pay to this Commonwealth an excise tax of ~~one and one-quarter mills~~ *50 cents* on each such ~~cigarette~~ *package or package of such tobacco products*, except the tax on cigars shall be 5 cents on each.

B. The revenues generated by such tax shall be collected by the Department and deposited into the general fund until such time as the Health Care Trust Fund is created following the approval by a majority of the voters in a general election of a constitutional amendment requiring the Fund's creation, at which time such revenues shall be deposited into the Fund.

§ 58.1-1002. Exemptions.

The tax levied shall not apply to free distribution of sample cigarettes in packages containing ~~five~~ *5* or fewer cigarettes or single sample cigars, or to any package of ~~cigarettes~~ *tobacco products* customarily donated free of charge by manufacturers of ~~cigarettes~~ *tobacco products* to employees in factories where ~~cigarettes~~ *tobacco products* are manufactured in this Commonwealth, when such packages of ~~cigarettes~~ *tobacco products* are not taxed by the federal government.

§ 58.1-1003. How paid; affixing of stamps; records of dealers.

A. The taxes imposed by this chapter shall be paid by affixing stamps equaling the amount of the tax in the manner and at the time herein set forth. The stamps shall be affixed to each individual package, bag, box or can in such a manner that their removal will require continued application of water or steam. Time allowed for affixing stamps shall be as follows: Every wholesale or retail dealer in this Commonwealth shall, within one hour after receipt of any unstamped ~~cigarettes~~ *tobacco products*, begin affixing to the same the requisite denominations and amount of stamp or stamps that represent the

proper tax levied by this chapter. Stamping shall be continued with reasonable diligence by the wholesale or retail dealer until all of the unstamped *cigarette tobacco products* have been stamped; however, any wholesale dealer engaged in interstate business shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this chapter. Interstate stock shall be kept entirely separate from stamped stock in such a manner as to prevent the commingling of the interstate stock with the stamped stock.

B. Every wholesale dealer shall at the time of shipping or delivering any *cigarette tobacco products* make and retain a true duplicate invoice of the same which shall show full and complete details of the sale or delivery of the taxable article. Wholesale and retail dealers shall also keep a record of purchases of all *cigarette tobacco products*, and retain all books, records, and memoranda pertaining to the purchase and sale of such *cigarette tobacco products*.

C. Any wholesaler or retailer who fails or refuses to comply with any of the above provisions shall be guilty of a Class 1 misdemeanor.

§ 58.1-1004. Retail dealers receiving tobacco products from outside Commonwealth to mail duplicate invoice to Department.

Any retail dealer of *cigarette tobacco products* who purchases or receives such *cigarette tobacco products* from without the Commonwealth, whether the same have been ordered or purchased through a wholesaler in this Commonwealth, or by drop shipment or otherwise, shall within twelve hours of receipt of such *cigarette tobacco products* mail by registered mail a true duplicate invoice of all such purchases or receipts to the Department. The invoice shall carry the name of the person from whom or through whom such purchases or shipments of the *cigarette tobacco products* were so received, showing kinds and quantities. Any retail dealer failing or refusing to furnish duplicate invoices, in both the manner and time allowed, shall be guilty of a Class 2 misdemeanor.

§ 58.1-1005. Duties of carriers, etc., transporting tobacco products.

All common carriers, contract carriers, buses, and trucks transporting *cigarette tobacco products* shall maintain a statement or record of all consignments or deliveries of *cigarette tobacco products*, showing date, point of origin, point of delivery and to whom delivered, and time of delivery, and may be required under regulations to be prescribed by the Department to transmit to the Department a periodic statement of such consignments or deliveries. Any person who fails to maintain the statement or record required by this section or who refuses to transmit to the Department the statement hereinabove provided for shall be guilty of a Class 2 misdemeanor.

§ 58.1-1006. Forms and kinds of containers, methods of breaking packages, and methods of affixing stamps; penalty for interfering with enforcement of article.

The Department shall provide by rules and regulations forms and kinds of containers, the methods of breaking packages and methods of affixing stamps that shall be employed by persons subject to the *cigarette tobacco products* tax, thereby making possible the enforcement of payment of the *cigarette tobacco products* tax by inspection. Any person subject to this tax engaging in or permitting such practices as are prohibited by rules and regulations of the Department or any person who upon demand of the Department or any of its officers or agents refuses to allow full inspection of the premises or any part thereof, or in any way interferes with any agent of the Department in the performance of his duties in enforcing this chapter, shall be guilty of a Class 2 misdemeanor.

§ 58.1-1007. Documents touching purchase, sale, etc., of tobacco products to be kept for three years, subject to inspection.

It shall be the duty of every person receiving, storing, selling, handling or transporting *cigarette tobacco products* in any manner whatsoever, to preserve all invoices, books, papers, cancelled checks, or other documents relating to the purchase, sale, exchange, receipt or transportation of all *cigarette tobacco products* for a period of three years. All such invoices, books, papers, cancelled checks or other memoranda and records shall be subject to audit and inspection by any duly authorized representative of the Department at all times. Any person who fails or refuses to keep and preserve the records as herein required, or who upon request by a duly authorized agent of the Department fails or refuses to allow an audit or inspection of records as hereinabove provided, shall be guilty of a Class 2 misdemeanor.

§ 58.1-1008. Monthly reports of wholesale dealers; penalty.

Every wholesale dealer qualifying as such with the Department shall be required to file a report between the first and tenth of each month, covering the purchase or receipt by them of all *cigarette tobacco products* during the preceding month. The report shall give in detail the different kinds and quantities of *cigarette tobacco products* so purchased or received by them during the preceding month. The report shall also list all orders for *cigarette tobacco products* purchased through such wholesale dealer from without this Commonwealth on a drop shipment and consigned direct to the person ordering such *cigarette tobacco products* through such wholesale dealer. If, upon examination of invoices of any wholesale dealer, such dealer is unable to furnish evidence to the Department of sufficient stamp purchases to cover unstamped *cigarette tobacco products* purchased by him, the prima

facie presumption shall arise that such *cigarette tobacco products* were sold without the proper stamps affixed thereto in violation of § 58.1-1003. Any wholesaler failing or refusing to file the report required by this section in the manner and time allowed shall be guilty of a Class 2 misdemeanor.

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

The Department is hereby authorized and directed to have prepared and to sell stamps suitable for denoting the tax on all *cigarette tobacco products*. 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 *cigarette tobacco products* sold and delivered by them, whether the said stamps be genuine or counterfeit, shall be guilty of a Class 6 felony. Any person who purchases revenue stamps from anyone other than the Department, unless such stamps are already affixed to *cigarette tobacco products* being purchased by and delivered to him, or who uses or affixes, or causes to be used or affixed, any revenue stamps not purchased from the Department by the owner of the *cigarette tobacco products* being handled or stamped, whether such stamps are 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 *cigarette tobacco products* 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 or box. In addition to any other penalties provided by law, the Department may revoke the permit issued, in accordance with § 58.1-1011, to any person who violates this section.

As used herein "carton" shall mean ~~ten~~ means 10 packs of cigarettes, each containing ~~twenty~~ 20 cigarettes and "box" means 20 cigars. 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 *cigarette tobacco products*, 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 revenue stamp to each package of *cigarettes tobacco products*.

§ 58.1-1010. Sale of unstamped tobacco products by wholesale dealers.

A. A wholesale dealer who is duly qualified as such under § 58.1-1011 may sell *cigarettes tobacco products* without the Virginia revenue stamps affixed thereto, provided such *cigarette tobacco products* are sold and shipped or delivered in interstate commerce to a person outside this Commonwealth. Such wholesaler shall have on file a record of such sale, the original purchase order, a copy of the invoice therefor, and a receipt from a common carrier, contract carrier, or post office showing shipment for delivery in such other state, or, if delivered by such dealer to the purchaser at a point outside of this Commonwealth, a receipt showing such delivery in addition to the record, original purchase order and copy of the invoice relating to such sale.

B. Such duly qualified wholesaler may sell *cigarette tobacco products* without the Virginia revenue stamps affixed thereto, provided:

1. Such *cigarette tobacco products* are sold to a person who is engaged in business as a dealer in *cigarette tobacco products* in another state;

2. Such *cigarette tobacco products* are purchased exclusively for resale in the other state; and

3. Such *cigarette tobacco products* are at the time of sale properly stamped by the Virginia wholesaler with revenue stamps authorized and issued by the other state for use upon such *cigarette tobacco products*. A wholesaler shall have on file a record of each such sale, the original purchase order, a copy of the invoice therefor, a receipt from the purchaser showing that such purchase was made exclusively for resale in the other state, and a record showing the purchase and use of such revenue stamps of the other state. Any such wholesaler with a place of business in a city located partly within and partly without this Commonwealth, or in a county adjoining such city, shall not be required to obtain such receipt from a purchaser from the other state, if the other state imposes a cigarette or tobacco products tax and if the cigarette or tobacco products tax in the other state is at a higher rate than the tax imposed by the Commonwealth of Virginia.

C. *Cigarettes Tobacco products* may be sold by duly qualified wholesalers, without revenue stamps affixed thereto, when sold to the United States or to any instrumentality thereof for resale to or for the use or consumption by members of the armed services of the United States, or when sold to the Veterans Canteen Service of the Veterans Administration for resale to veterans of the armed services of the United States who are hospitalized or domiciled in hospitals and homes of the Veterans Administration, provided the books and records, including original purchase orders and copies of invoices showing such sales, are kept on file.

D. *Cigarettes Tobacco products* may be sold by duly qualified wholesalers, without revenue stamps

305 affixed thereto, when sold and delivered to ships regularly engaged in foreign commerce or coastwise
306 shipping between points in this Commonwealth and points outside of this Commonwealth for resale to
307 or for use or consumption upon such ship or in foreign commerce.

308 E. The Department is authorized to adopt rules and regulations with respect to the enforcement of the
309 provisions of this section to prevent any evasion of the tax herein imposed.

310 A failure to comply with any provision of this section with respect to any sale of unstamped
311 *cigarette tobacco products* shall subject the wholesaler to the payment of the tax thereon imposed by
312 this chapter.

313 Any person who violates any of the provisions of this section shall be guilty of a Class 2
314 misdemeanor.

315 § 58.1-1012. Duties of wholesale dealer on shipping, delivering or sending out tobacco products.

316 Every wholesale dealer in this Commonwealth shall, before shipping, delivering or sending out any
317 *cigarette tobacco products* to any dealer in this Commonwealth or for sale in this Commonwealth, cause
318 the same to have the requisite denominations and amount of stamps to represent the tax affixed as stated
319 herein, and every other wholesale dealer shall at the time of shipping or delivering any *cigarette tobacco*
320 *products* make a true duplicate invoice of the same, showing the date, amount and value of each class
321 of articles shipped or delivered, and retain a duplicate thereof. Wholesale dealers in this Commonwealth
322 who ship, deliver, or send any *cigarette tobacco products* to the United States government for sale or
323 distribution to any military, naval or marine reservation owned by the United States government within
324 this Commonwealth shall be required to carry out the provisions set out in this chapter for such sales or
325 deliveries.

326 § 58.1-1013. Penalty for failing to affix stamps; subsequent violations of article.

327 Any person within this Commonwealth who sells, stores or receives *cigarette tobacco products* for
328 the purpose of distribution to another within this Commonwealth and fails to properly affix the required
329 stamps to any *cigarette tobacco products* pursuant to the provisions of this chapter shall be required to
330 pay as part of the tax imposed hereunder, a penalty of ~~twenty-five~~ 25 dollars, to be assessed and
331 collected by the Department as other taxes are collected. Where willful intent exists to defraud the
332 Commonwealth of the tax levied under this chapter, such person shall be required to pay a penalty of
333 \$250. It shall be prima facie evidence of intent to defraud when the number of such unstamped
334 cigarettes, *cigars and other tobacco products* exceeds ~~thirty~~ 30 packs of cigarettes, 600 cigars, and 600
335 packages of snuff, chewing tobacco or smoking tobacco.

336 Each pack of cigarettes, *cigar, or package of snuff, chewing tobacco and smoking tobacco* not having
337 proper stamps affixed thereto as herein required shall be deemed a separate offense. Any
338 *cigarette tobacco products* in the place of business of any person required by the provisions of this
339 chapter to stamp the same shall be prima facie evidence that they are intended for sale.

340 Any person who has been found guilty of violating any of the provisions of this article and who,
341 after being punished by fine, penalty, assessment or imprisonment, is guilty of a second or subsequent
342 violation of this chapter shall, upon being found guilty of such second offense, have his or its permit
343 revoked by the Department, and no further permit shall be issued or granted to such person for a period
344 of one year from the date the permit has been revoked.

345 § 58.1-1014. Permits required for transporting or distributing tobacco products.

346 Any person who transports or distributes *cigarette tobacco products* in any manner whatsoever within
347 this Commonwealth who has not a permit issued under this chapter, shall, before transporting or
348 distributing any of such tobacco products as enumerated and defined herein, secure a permit from the
349 Department or be granted a waiver therefrom when the Commissioner is of the opinion that such permit
350 is unnecessary. The Department shall, before issuing or waiving any such permit, ascertain from the
351 applicant the nature of his business and the names of each county and city to which the applicant
352 desires to transport or distribute *cigarette tobacco products*. A permit when so issued shall be
353 conspicuously displayed on the vehicle for which it is issued. Failure to properly display the permit as
354 required shall be deemed a violation of this section. Any person having been issued a permit who
355 engages in any practices which are deemed by the Department to be injurious to the collection of the
356 tax provided herein may have his permit revoked by the Department and no further permit shall be
357 issued for six months and not then unless the Department is satisfied it is advisable. Duplicate permit
358 cards will be issued to replace permits lost or damaged upon application. Any person found transporting
359 or distributing *cigarette tobacco products* without first securing a permit as required above shall be
360 guilty of a Class 1 misdemeanor.

361 § 58.1-1017. Sale, purchase, possession, etc., of tobacco products for purpose of evading tax.

362 It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase, transport,
363 receive or possess *cigarette tobacco products* unless the same have been stamped in the manner required
364 by law, for the purpose of evading the payment of the taxes on such products. Any person violating the
365 provisions of this section shall be guilty of a Class 2 misdemeanor.

366 If a person who is not a regularly licensed dealer as provided in § 58.1-1011 has in his possession

within the Commonwealth more than ~~thirty~~ 30 packages of unstamped cigarettes, 600 cigars, or 600 packages of snuff, chewing tobacco or smoking tobacco such possession shall be presumed to be for the purpose of evading the payment of the taxes due thereon.

§ 58.1-3830. Local taxes on tobacco products; use of dual die or stamp to evidence payment of both county, city, or town and state tax on tobacco products.

A. ~~No provision of Chapter 10 (§ 58.1-1000 et seq.) of this title shall be construed to deprive counties, cities and towns of the right to levy taxes upon the sale or use of cigarettes, provided such county, city or town had such power prior to January 1, 1977~~ Any county, city, or town may impose a tax on tobacco products, as defined in § 58.1-1000, in conformity with this section. Such tax shall be in such amount and on such terms as the governing body may by ordinance prescribe, not to exceed 25 cents per pack or package, except the tax on cigars shall not exceed 3 cents each; however, any county, city, or town that imposed the tax on or before January 1, 2003, at a higher rate may continue at such higher rate but shall not increase such rate after that date. The rate limitations in this subsection shall remain in effect until January 1, 2008.

B. The governing body of any county, city or town which levies a ~~cigarette~~tobacco products tax and permits the use of meter impressions or stamps to evidence its payment may authorize an officer of the county, city or town or joint enforcement authority to enter into an arrangement with the Department of Taxation under which a tobacco wholesaler who so desires may use a dual die or stamp to evidence the payment of both the county, city, or town tax, and the state tax, and the Department is hereby authorized to enter into such an arrangement. The procedure under such an arrangement shall be such as may be agreed upon by and between the authorized county, city, town or joint enforcement authority officer and the Department.

B.C. Any county ~~cigarette~~tobacco products tax imposed shall not apply within the limits of any town located in such county where such town now, or hereafter, imposes a town ~~cigarette~~tobacco products tax. However, if the governing body of any such town shall provide that a county ~~cigarette~~tobacco products tax, as well as the town ~~cigarette~~tobacco products tax, shall apply within the limits of such town, then such ~~cigarette~~tobacco products tax may be imposed by the county within such town.

§ 58.1-3832. Local ordinances to administer and enforce local taxes on sale or use of tobacco products.

Any county, city or town having a tax upon the sale or use of ~~cigarettes~~tobacco products may by ordinance, provide for the administration and enforcement of any such ~~cigarette~~tobacco products tax. Such local ordinance may:

1. Provide for the registration of any distributor, wholesaler, vendor, retailer or other person selling, storing or possessing ~~cigarettes~~tobacco products within or transporting ~~cigarettes~~tobacco products within or into such taxing jurisdiction for sale or use. Such registration may be conditioned upon the filing of a bond with a surety company authorized to do business in Virginia as surety, which bond shall not exceed one and one-half times the average monthly liability of such taxpayer. The county, city or town may revoke registration if such bond is impaired, but for no other reason. Any such distributor, wholesaler, retailer or other person whose business and residence is outside the taxing jurisdiction, who shall sell, store or possess in the taxing jurisdiction therein any ~~cigarettes~~tobacco products shall, by virtue of such sale, storage or possession submit himself to its legal jurisdiction and appoint as his attorney for any service of lawful process such officer or person as may be designated in the local ordinance for that purpose. A copy of any such process served on the said officer or person shall be sent forthwith by registered mail to the distributor, wholesaler or retailer.

2. Provide for the use of a tax stamp or meter impression as evidence of payment of the tax or other method or system of reporting payment and collection of such tax.

3. Provide that ~~tobacco products~~ cigarettes found in quantities of more than six cartons; cigars found in quantities of more than 600; and snuff, chewing tobacco, and smoking tobacco found in quantities of more than 600 packages within the taxing jurisdiction shall be conclusively presumed for sale or use within the jurisdiction and may be seized and confiscated if:

a. They are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and of the consignee or purchaser, and the brands and quantity of ~~cigarettes~~tobacco products so transported, or are in transit and accompanied by a bill of lading or other document which is false or fraudulent, in whole or in part; or

b. They are in transit and are accompanied by a bill of lading or other document indicating:

(1) A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid, unless the tax of the state or District of destination has been paid and the said products bear the tax stamps of that state or District; or

(2) A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia sales and use tax certificate, a Virginia retail ~~cigarette~~ tobacco products

license and, where applicable, both a business license and retail ~~cigarette~~ *tobacco products* license issued by the local jurisdiction of destination; or

c. They are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subparagraph shall not apply to ~~cigarette~~ *tobacco products* in the possession of distributors or public warehouses which have filed notice and appropriate proof with the taxing jurisdiction that those ~~cigarette~~ *tobacco products* are temporarily within the taxing jurisdiction and will be sent to consignees or purchasers outside the jurisdiction in the normal course of business.

4. Provide that ~~cigarette~~ *tobacco products* and other property, other than motor vehicles, used in the furtherance of any illegal evasion of the tax so seized and confiscated may be disposed of by sale or other method deemed appropriate by the local taxing authority. No credit from any sale or other disposition shall be allowed toward any tax or penalties owed.

5. Provide that persons violating any provision thereof shall be deemed guilty of a Class 1 misdemeanor, and require the payment of penalties for late payment not to exceed ten percent per month, penalties for fraud or evasion of the tax not to exceed fifty percent, and interest not to exceed three quarters of one percent per month, upon any tax found to be overdue and unpaid. The mere possession of untaxed cigarettes in quantities of not more than six cartons; *cigars in quantities of more than 600; and snuff, chewing tobacco, and smoking tobacco in quantities of more than 600 packages* shall not be a violation of any such ordinance.

6. Provide for the forfeiture and sale of any property seized; provided, however, that proper notice of such seizure shall be given to the known holders of property interests in such property and shall include procedures for administrative appeal as well as affirmative defenses which may be asserted by such holders which procedures must be set forth in reasonable detail.

7. Provide that any coin-operated vending machine, in which any ~~cigarette~~ *tobacco products* are found, stored or possessed bearing a counterfeit or bogus ~~cigarette~~ *tobacco products* tax stamp or impression or any unstamped tobacco products, or any ~~cigarette~~ *tobacco products* upon which the tax has not been paid, may be declared contraband property and shall be subject to confiscation and sale as provided in subsection 6. When any such vending machine is found containing such ~~cigarette~~ *tobacco products* it shall be presumed that such ~~cigarette~~ *tobacco products* were intended for distribution, sale or use therefrom. In lieu of immediate seizure and confiscation of any vending machines used in an illegal evasion of the tax it may be sealed by appropriate enforcement authorities to prevent continued illegal sale or removal of any ~~cigarette~~ *tobacco products*, and may be left unmoved until other civil and criminal penalties are imposed or waived. Notice requirements shall be the same as if the machine had been seized. Such seal may be removed and the machine declared eligible for operation only by authorized enforcement authorities. Nothing in this section shall prevent seizure and confiscation of a vending machine at any time after it is sealed.

8. Provide that any counterfeit stamps or counterfeit impression devices may also be seized and confiscated.

9. Any county, city or town may enact an ordinance which would delegate its administrative and enforcement authority under its ~~cigarette~~ *tobacco products* tax ordinance to one agency or authority pursuant to the provisions of § 15.2-1300. Such agency or authority may promulgate rules and regulations governing the display of ~~cigarette~~ *tobacco products* stamps in vending machines, tax liens against property of taxpayers hereunder, extend varying discount rates and establish different classes of taxpayers or those required to collect and remit the tax, requirements concerning keeping and production of records, administrative and jeopardy assessment of tax where reasonably justified, required notice to authorities of sale of taxpayer's business, audit requirements and authority, and criteria for authority of distributors and others to possess untaxed ~~cigarette~~ *tobacco products* and any other provisions consistent with the powers granted by this section or necessarily implied therefrom. Such ordinance may further provide that such agency or authority created may issue a common revenue stamp, employ legal counsel, bring appropriate court action, in its own name where necessary to enforce payment of the ~~cigarette~~ *tobacco products* taxes or penalties owed any member jurisdiction and provide ~~cigarette~~ *tobacco products* tax agents, and the necessary enforcement supplies and equipment needed to effectively enforce the ~~cigarette~~ *tobacco products* tax ordinance promulgated by each such county, city or town. Any ~~cigarette~~ *tobacco products* tax agents shall meet such requirements of training or experience as may be promulgated from time to time by the enforcement authority when performing their duties and shall be required to carry proper identification and may be armed for their own protection and for the enforcement of such ordinance. Any such agent shall have the power of arrest upon reasonable and probable cause that a violation of any tobacco *products* tax ordinance has been committed.

2. That this act shall be known as the Revenue Revitalization Act of 2003. Its purpose is to revitalize the Commonwealth's revenue production through various tax enhancements.

3. That § 58.1-3831 of the Code of Virginia is repealed.