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SENATE BILL NO. 465

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 58.1-1001, 58.1-3830, and 58.1-3840 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 10 of Title 58.1 an article numbered 2.1, consisting of sections numbered 58.1-1021.01 through 58.1-1021.04; and to repeal § 58.1-3831 of the Code of Virginia, relating to state and local taxation of cigarettes and tobacco products.

Patron—Chichester

Referred to Committee on Finance

Whereas, the cost to the Commonwealth for Medicaid services has grown at an annual rate of 7.1 percent since 1997; and

Whereas, the annual cost for Medicaid services is expected to increase by 8.5 percent each year through 2012, a rate of growth that is higher than the expected growth in general fund revenue; and

Whereas, the provision of health services is a shared responsibility between the Commonwealth and its local governments; and

Whereas, cigarettes and other tobacco products contribute to the cost of health care services; and

Whereas, Virginia's state cigarette tax is the lowest in the nation; and

Whereas, Virginia's cities and towns have unlimited ability to increase cigarette taxes; and

Whereas, only the Counties of Arlington and Fairfax can impose a cigarette tax, and at a capped rate, resulting in disparate treatment between cities, towns, and counties in regard to authority to impose cigarette taxes; now, therefore

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1001, 58.1-3830 and 58.1-3840 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 10 of Title 58.1 an article numbered 2.1, consisting of sections numbered 58.1-1021.01 through 58.1-1021.04 as follows:

§ 58.1-1001. Tax levied; rate.

In addition to all other taxes now imposed by law, every person within this Commonwealth who sells, stores or receives cigarettes 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~~ 1.75 cents on each such cigarette.

*Article 2.1.**Tobacco Products Tax.*

§ 58.1-1021.01. *Definitions.*

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

"Package" means any package, bag, box, can, or other container in which tobacco products are packaged and sold.

"Purchase price" means the same as sales price but applies to the total price paid for tobacco products.

"Retail dealer" means every person other than a wholesale dealer, as defined in this section, who sells or offers for sale any tobacco product.

"Sales price" means the total amount for which tobacco products are sold, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include any cash discount allowed and taken or finance charges, carrying charges, service charges or interest from credit extended on sales of tobacco products.

"Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702 (a) of the Internal Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702 (m) of the Internal Revenue Code, and as such section may be amended; (iii) "pipe tobacco" as defined in § 5702 (n) of the Internal Revenue Code, and as such section may be amended; or (iv) "roll-your-own tobacco" as defined in § 5702 (o) of the Internal Revenue Code, and as such section may be amended.

"Wholesale dealer" means persons who sell any tobacco product at wholesale to retail dealers, or who sell any tobacco product at wholesale to institutional, commercial or industrial users.

§ 58.1-1021.02. *Tax on tobacco products.*

A. In addition to all other taxes now imposed by law, there is hereby imposed a tax on every wholesale dealer within the Commonwealth selling any tobacco product to a retail dealer located in the

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59 Commonwealth or selling any tobacco product to institutional, commercial or industrial users located in
60 the Commonwealth. For purposes of such tax, chain store distribution centers or houses that distribute
61 any tobacco product to their stores for sale at retail shall be deemed to be a wholesale dealer selling to
62 a retail dealer.

63 The tax shall be imposed at a rate of 10 percent of the sales price charged by the wholesale dealer
64 for each such package of tobacco product sold to a retail dealer or institutional, commercial or
65 industrial user. In any case where a chain store distribution center or house distributes any tobacco
66 product to its stores, the tax shall be imposed on the purchase price paid by the chain store distribution
67 center or house for each such package of tobacco product so distributed.

68 B. In addition to all other taxes now imposed by law, there is hereby imposed a tax on every retail
69 dealer within the Commonwealth purchasing any tobacco product from a wholesale dealer located
70 outside the Commonwealth.

71 The tax shall be imposed at a rate of 10 percent of the purchase price paid by the retail dealer for
72 each such package of tobacco product purchased from a wholesale dealer located outside the
73 Commonwealth.

74 § 58.1-1021.03. Monthly return and payments of tax.

75 A. Every wholesale dealer subject to the tax imposed under this article shall, beginning with the
76 month of August 2004, file a monthly return no later than the tenth of each month on a form prescribed
77 by the Department, covering the sale of tobacco products by such dealer, for which a tax is imposed
78 pursuant to subsection A of 58.1-1021.02, during the preceding month. The return shall contain or be
79 accompanied by such further information as the Department shall require. The wholesale dealer, at the
80 time of filing the return, shall pay to the Department the tax imposed under subsection A of
81 § 58.1-1021.02 on the sales price for each such package of tobacco product sold in the preceding
82 month.

83 B. Every retail dealer subject to the tax imposed under this article shall, beginning with the month of
84 August 2004, file a monthly return no later than the tenth of each month on a form prescribed by the
85 Department, covering the purchase of tobacco products by such dealer, for which a tax is imposed
86 pursuant to subsection B of 58.1-1021.02, during the preceding month. The return shall contain or be
87 accompanied by such further information as the Department shall require. The retail dealer, at the time
88 of filing the return, shall pay to the Department the tax imposed under subsection B of § 58.1-1021.02
89 on the purchase price for each such package of tobacco product purchased in the preceding month.

90 § 58.1-1021.04. Failure to file return; fraudulent return; penalties; interest; overpayment of tax.

91 A. When any wholesale dealer or retail dealer fails to make any return or pay the full amount of the
92 tax required by this article, there shall be imposed a specific penalty to be added to the tax in the
93 amount of five percent if the failure is for not more than one month, with an additional two percent for
94 each additional month, or fraction thereof, during which the failure continues, not to exceed 20 percent
95 in the aggregate. In no case, however, shall the penalty be less than \$10 and such minimum penalty
96 shall apply whether or not any tax is due for the period for which such return was required. If such
97 failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner,
98 such return with or without remittance may be accepted exclusive of penalties. In the case of a false or
99 fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under this
100 article, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth
101 of any such tax, a specific penalty of 50 percent of the amount of the proper tax shall be assessed. All
102 penalties and interest imposed by this article shall be payable by the wholesale dealer or retail dealer
103 and collectible by the Department in the same manner as if they were a part of the tax imposed.

104 B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this
105 article when any wholesale dealer or retail dealer reports his sales or purchases, as the case may be, at
106 50 percent or less of the actual amount.

107 C. Interest at a rate determined in accordance with § 58.1-15 shall accrue on the tax until the same
108 is paid.

109 No deficiency, interest or penalty shall be assessed for any month after the expiration of three years
110 from the date set for the filing of the return for such month, except in cases of fraud, or where no
111 return has been filed for such month.

112 D. If the Tax Commissioner determines that the amount paid the Commonwealth under this article in
113 regard to any monthly return was greater than the amount of tax due the Commonwealth, the excess
114 may be taken as a credit by the wholesale dealer or retail dealer against a subsequent month's tax
115 imposed under this article. However, if such wholesale dealer or retail dealer requests a refund, such
116 excess shall be refunded to the dealer within 45 days of the request. The refund shall include interest at
117 the rate provided in § 58.1-15. Interest on such refunds shall accrue from the due date of the return to
118 which such excess is attributable to or the date such excess was paid to the Department, whichever is
119 later, and shall end on a date determined by the Department preceding the date of the refund check by
120 not more than seven days.

§ 58.1-3830. Local taxes not prohibited; use of dual die or stamp to evidence payment of both county, city, or town and state tax on cigarettes.

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. All cities and towns shall have the power to levy taxes upon the sale or use of cigarettes as provided herein, and all counties shall have such powers beginning July 1, 2005. In addition, the Counties of Fairfax and Arlington are authorized to levy a tax upon the sale or use of cigarettes at a rate not to exceed five cents per pack for the period beginning July 1, 2004, and ending midnight on June 30, 2005. The governing body of any county, city or town which levies a cigarette 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. Any county cigarette 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 tax. However, if the governing body of any such town shall provide that a county cigarette tax, as well as the town cigarette tax, shall apply within the limits of such town, then such cigarette tax may be imposed by the county within such town so long as the sum of the county and town cigarette tax rates does not exceed the maximum local cigarette tax rate authorized for the town under this article.

C. Any cigarette tax imposed by a county, city, or town shall be on such terms and in such amounts as the governing body may by ordinance prescribe, subject to the following limitations:

1. Any cigarette tax imposed by a city or town shall not exceed 2.75 cents on each cigarette. Any city or town imposing the tax at a higher rate prior to January 1, 2004, may continue to impose the tax at that rate but no higher.

2. a. From July 1, 2005, through midnight on June 30, 2006, any cigarette tax imposed by a county shall not exceed one-half cent on each cigarette.

b. From July 1, 2006, through midnight on June 30, 2007, any cigarette tax imposed by a county shall not exceed one cent on each cigarette.

c. From July 1, 2007, through midnight on June 30, 2008, any cigarette tax imposed by a county shall not exceed 1.5 cents on each cigarette.

d. From July 1, 2008, through midnight on June 30, 2009, any cigarette tax imposed by a county shall not exceed two cents on each cigarette.

e. On and after July 1, 2009, any cigarette tax imposed by a county shall not exceed 2.75 cents on each cigarette.

§ 58.1-3840. Certain excise taxes permitted.

A. The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title to the contrary notwithstanding, any city or town having general taxing powers established by charter pursuant to or consistent with the provisions of § 15.2-1104 may impose excise taxes on cigarettes, admissions, transient room rentals, meals, and travel campgrounds, provided that no such taxes may be imposed on food and beverages sold through vending machines or on any tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children. In addition, as set forth in § 51.5-98, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes.

B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

C. Any city or town that is authorized to levy a tax on admissions may levy the tax on admissions paid for any event held at facilities that are not owned by the city or town at a lower rate than the rate levied on admissions paid for any event held at its city- or town-owned civic centers, stadiums and amphitheatres.

2. That the revenues generated from the state tax on cigarettes pursuant to § 58.1-1001 of the Code of Virginia and the state tax on tobacco products pursuant to § 58.1-1021.02 of the Code of

182 Virginia shall be appropriated by the General Assembly solely for the provision of medical
183 assistance services pursuant to Virginia's Medicaid Program authorized under Title XIX of the
184 Social Security Act.
185 3. That § 58.1-3831 of the Code of Virginia is repealed.