

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 28

An Act to amend and reenact §§ 58.1-1000, 58.1-1003, 58.1-1006, 58.1-1007, 58.1-1008, 58.1-1010, 58.1-1011, 58.1-1017 and 58.1-1021 of the Code of Virginia, relating to enforcement of the Virginia Cigarette Tax; penalties.

[S 876]

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1000, 58.1-1003, 58.1-1006, 58.1-1007, 58.1-1008, 58.1-1010, 58.1-1011, 58.1-1017 and 58.1-1021 of the Code of Virginia are amended and reenacted, as follows:

§ 58.1-1000. Definitions.

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

"Carton" means 10 packs of cigarettes, each containing 20 cigarettes or ~~nine~~ *eight* packs, each containing 25 cigarettes.

"Manufacturer" means any tobacco product manufacturer as defined in § 3.1-336.1.

"Pack" means a package containing either 20 or 25 cigarettes.

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

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

"Stamping agent" shall have the same meaning as provided in § 3.1-336.3.

"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 for any purpose except sale in the regular course of business or subsequent use solely outside this Commonwealth.

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

"Wholesale dealer" includes persons who sell cigarettes 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 to their stores for sale at retail.

§ 58.1-1003. How paid; affixing of stamps; records of stamping agents; civil penalties.

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 stamping agent in this Commonwealth shall, within one business day of receipt of any unstamped cigarettes, affix 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 stamping agent. 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 Virginia revenue 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. All interstate stock so set aside shall be in accordance with § 58.1-1010.

B. Every wholesale dealer shall at the time of shipping or delivering any cigarettes 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. All stamping agents shall also keep a record of purchases of all cigarettes, and retain all books, records, and memoranda pertaining to the purchase and sale of such cigarettes for a period of five years, and such records shall be subject to examination by the Department upon request.

C. Every stamping agent shall be required to file a report between the first and ~~tenth~~ *twentieth* of each month, covering all revenue stamps the stamping agent affixed to cigarettes during the preceding month. The report shall list all brands of cigarettes to which the Virginia revenue stamp was affixed and the quantity, measured in packs, of all such brands to which the Virginia revenue stamp was affixed. In addition, the report shall list the name and address of both the manufacturer of the cigarettes and the entity from which the cigarettes were obtained.

D. Any stamping agent who fails or refuses to comply with any of the above provisions shall have

his or its such agent's permit to affix revenue stamps revoked by the Commissioner and shall be guilty of a Class 1 misdemeanor. Additionally, a stamping agent may be subject to a civil penalty of \$500 for each day after the due date that an agent fails or refuses to file a report required under subsection C. The penalty shall be assessed and collected by the Department as other taxes are collected.

§ 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 tax, thereby making possible the enforcement of payment of the cigarette 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. Further, a stamping agent shall have such agent's stamping permit suspended and be subject to a penalty of \$1,000 for each day the stamping agent engages in or permits practices that are prohibited by rules and regulations of the Department or 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. Such penalty shall be assessed and collected by the Department as other taxes are collected.

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

It shall be the duty of every person receiving, storing, selling, handling or transporting cigarettes 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 cigarettes 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 shall be guilty of a Class 2 misdemeanor.~~ Any person 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 have his stamping permit suspended until such time as the Department is allowed to audit or inspect the records. The Department may impose a penalty of \$1,000 for each day that the person fails or refuses to allow an audit or inspection of the records. The penalty shall be assessed and collected by the Department as other taxes are collected.

§ 58.1-1008. Monthly reports of stamping agents; penalty.

~~Every wholesale dealer~~ In addition to the reporting requirements imposed by § 58.1-1003, every stamping agent qualifying as such with the Department shall be required to file a report between the first and ~~tenth~~ twentieth of each month, covering the purchase or receipt by them of all cigarettes during the preceding month. The report shall give in detail the different kinds and quantities of cigarettes so purchased or received by them during the preceding month. The report shall also list all orders for cigarettes purchased through such wholesale dealer from without this Commonwealth on a drop shipment and consigned direct to the person ordering such cigarettes through such ~~wholesale dealer stamping agent~~. If, upon examination of invoices of any ~~wholesale dealer stamping agent~~, such ~~dealer agent~~ is unable to furnish evidence to the Department of sufficient stamp purchases to cover unstamped cigarettes purchased by him, the prima facie presumption shall arise that such cigarettes 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.~~ The Department may impose a penalty of \$250, to be assessed and collected by the Department as other taxes are collected, on any stamping agent for each failure or refusal to file the report, or portion thereof, required by this section or by § 3.1-336.8 in the manner and time allowed. The Department may revoke a stamping permit for up to one year if the stamping agent fails to file more than one of the required reports in a timely manner in any calendar year. After such time, the stamping agent must reapply to the Department for a stamping permit. The Department may also impose a penalty, to be assessed and collected by the Department as other taxes are collected, of \$250 per pack of cigarettes on any person found to be selling cigarettes in Virginia after his stamping permit has been revoked. Each pack of cigarettes sold shall be considered a separate offense. Where willful intent exists, as defined in § 58.1-1013, the penalty shall be \$2,500 per pack.

§ 58.1-1010. Sale of unstamped cigarettes by wholesale dealers; penalty.

A. A wholesale dealer who is duly qualified as a wholesale dealer stamping agent under § 58.1-1011 may sell cigarettes without the Virginia revenue stamps affixed thereto, provided such cigarettes are sold and shipped or delivered in interstate commerce to a person outside this Commonwealth. Such wholesale dealer 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 wholesale 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 wholesale dealer may sell cigarettes without the Virginia revenue stamps affixed thereto, provided:

1. Such cigarettes are sold to a person who is engaged in business as a dealer in cigarettes in another state;

2. Such cigarettes are purchased exclusively for resale in the other state; and

3. Such cigarettes are at the time of sale properly stamped by the Virginia wholesale dealer with revenue stamps authorized and issued by the other state for use upon such cigarettes. A wholesale dealer 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, and shall set forth in his or its monthly report to the Department the quantity of cigarettes, measured in packs, so set aside for sale outside of the Commonwealth. If upon examination of invoices of any wholesale dealer, such dealer is unable to furnish evidence to the Department of sufficient stamp purchases from such other state to cover unstamped cigarettes set aside for sale in such other state, the prima facie presumption shall arise that such cigarettes were sold without the proper stamps affixed thereto in violation of § 58.1-1003.

C. Cigarettes may be sold by duly qualified wholesale dealers, 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 and shall set forth in his or its monthly report to the Department the quantity of cigarettes, measured in packs, so sold.

D. Cigarettes may be sold by duly qualified wholesale dealers, without revenue stamps affixed thereto, when sold and delivered to ships regularly engaged in foreign commerce or coastwise shipping between points in this Commonwealth and points outside of this Commonwealth for resale to or for use or consumption upon such ship or in foreign commerce.

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

A failure to comply with any provision of this section with respect to any sale of unstamped cigarettes shall subject the wholesale dealer to the payment of the tax thereon imposed by this chapter. *The Department may impose a penalty, to be assessed and collected by the Department as other taxes are collected, of up to \$500 per pack of cigarettes on any stamping agent it finds not in compliance with any provision of this section with respect to the sale of unstamped cigarettes. The Department may also suspend the stamping permit of such stamping agent until the tax and penalties have been paid to the Department.* Any person who violates any of the provisions of this section shall be guilty of a Class 2 misdemeanor.

§ 58.1-1011. Qualification for permit to affix Virginia revenue stamps; penalty.

Only manufacturers, wholesale dealers and retail dealers may be permitted as stamping agents. It shall be unlawful for any person to purchase, possess or affix Virginia revenue stamps without first obtaining a permit to do so from the Department. Every manufacturer, wholesale dealer or retail dealer who desires to qualify as a stamping agent with the Department shall make application to the Department on forms prescribed for this purpose, which shall be supplied upon request. The application forms will require such information relative to the nature of business engaged in by the applicant as the Department deems necessary to the qualifying of the applicant as a stamping agent. *The Department shall conduct a background investigation, to include a Virginia Criminal History Records search, and fingerprints of the applicant, or its responsible principals, managers, and other persons engaged in handling and stamping cigarettes at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the Department determines a National Criminal Records search is necessary, on applicants for licensure as cigarette tax stamping agents. The Department may refuse to issue a stamping permit or may suspend, revoke or refuse to renew a stamping permit issued to any person, partnership, corporation, limited liability company or business trust, if it determines that the principals, managers, and other persons engaged in handling and stamping cigarettes at the licensable location of the applicant has been (i) found guilty of any fraud or misrepresentation in any connection, (ii) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering, or (iii) convicted of a felony. Anyone who knowingly and willfully falsifies, conceals or misrepresents a material fact or knowingly and willfully makes a false, fictitious or fraudulent statement or representation in any application for a stamping permit to the Department shall be guilty of a Class 1 misdemeanor. The Department may establish an application or renewal fee not to exceed \$750 to be retained by the Department to be applied to the administrative and other costs of processing stamping agent applications, conducting background investigations and issuing stamping permits. Any application or renewal fees collected pursuant to this section in excess of such*

costs as of June 30 in even numbered years shall be reported to the State Treasurer and deposited into the state treasury. If the Department after review of his application, believes the manufacturer, wholesale dealer or retail dealer to be qualified, the Department shall issue to the applicant a permit qualifying him as a stamping agent, as defined in this chapter, and he shall be allowed the discount on purchases of Virginia revenue stamps as set out herein for stamping agents purchasing stamps for their individual use. Such stamping agent shall be authorized to affix Virginia revenue stamps, and in addition, if the applicant qualifies as a wholesale dealer, that shall be so noted on the permit issued by the Department. Permits issued pursuant to this section shall be valid for a period of three years from the date of issue unless revoked by the Department in the manner provided herein. The Department shall not sell Virginia revenue stamps to any person or entity unless and until the Department has issued that person or entity a permit to affix Virginia revenue stamps. The Department may promulgate regulations governing the issuance, suspension and revocation of stamping agent permits. The Department may at any time revoke the permit issued to any stamping agent as herein provided who is ~~found guilty of violating~~ *not in compliance with* any of the provisions of this chapter, or any of the rules of the Department adopted and promulgated under authority of this chapter.

§ 58.1-1017. Sale, purchase, possession, etc., of cigarettes for purpose of evading tax; penalties.

A. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase, transport, receive or possess less than 3,000 packages of cigarettes unless the same have been stamped in the manner required by law, for the purpose of evading the payment of the taxes on such products. Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor. *In addition, the Department may impose a penalty, to be assessed and collected by the Department as other taxes are collected, not to exceed \$500 per pack on any person for violation of this section. Each pack of cigarettes sold, purchased, transported or possessed shall be considered a separate offense.*

B. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase, transport, receive or possess 3,000 or more packages of cigarettes unless the same have been stamped in the manner required by law, for the purpose of evading the payment of the taxes on such products. Any person violating the provisions of this subsection shall be guilty of a Class 6 felony.

C. 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 30 packages of unstamped cigarettes, such possession shall be presumed to be for the purpose of evading the payment of the taxes due thereon.

§ 58.1-1021. Documents touching purchase, sale, etc., of cigarettes to be kept for three years, subject to inspection; penalty.

It shall be the duty of every person storing, using or otherwise consuming in this Commonwealth cigarettes subject to the provisions of this article to keep and preserve all invoices, books, papers, cancelled checks, or other memoranda touching the purchase, sale, exchange, receipt, ownership, storage, use or other consumption of such cigarettes for a period of three years. All such invoices, books, papers, cancelled checks, or other memoranda shall be subject to audit and inspection by any duly authorized representative of the Department at any reasonable time. Any person who fails or refuses to keep and preserve the records as herein required, ~~or shall be guilty of a Class 2 misdemeanor.~~ Any person who ~~upon request by a duly authorized agent of the Department~~ fails or refuses to allow an audit or inspection of the records as herein provided, shall be ~~guilty of a Class 2 misdemeanor~~ *assessed a penalty of \$1,000 for each day he fails or refuses to allow an audit or inspection of the records, to be assessed and collected by the Department as other taxes are collected.*