

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 58.1-1009 and 58.1-1021.03 of the Code of Virginia, relating to the discount allowed to dealers of cigarettes and other tobacco products.

[H 2625]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1009 and 58.1-1021.03 of the Code of Virginia are amended and reenacted as follows:

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

A. 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. Any person who purchases revenue stamps from anyone other than the Department, unless such stamps are already affixed to cigarettes 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 cigarettes being handled or stamped, whether such stamps are genuine or counterfeit, shall be guilty of a Class 6 felony. When stamping agents 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 to each stamping agent on such sales of revenue stamps a discount of equal to two and one-half cents per carton percent of the total charged to the stamping agent by the Department for the purchase of the revenue stamps. The Tax Commissioner shall make a written certification to the Comptroller no later than the twentieth day of each month in regard to all discounts allowed to stamping agents for the immediately preceding month. The certification shall provide the amount of the difference between all such discounts allowed at the rate of two percent of the total charged to the stamping agent, effective July 1, 2005, and all discounts that would have been allowed at the rate of two and one-half cents per carton that was in effect as of June 30, 2005. No later than five business days after receiving the Tax Commissioner's certification, the Comptroller shall make a deposit from the general fund equal to such amount certified into the Virginia Health Care Fund established under § 32.1-366.

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 revenue stamp to each package of cigarettes.

B. 1. The Department shall provide Virginia revenue stamps to certain wholesale dealers holding a current permit issued pursuant to § 58.1-1011 prior to collecting the tax imposed under this chapter from such wholesale dealer. Such wholesale dealers shall be allowed to obtain the stamps from the Department without concurrent payment of the tax only if the conditions of this subsection are satisfied.

In order to obtain Virginia revenue stamps without concurrent payment of the tax imposed under this chapter, a wholesale dealer shall (i) file a bond with a corporate surety licensed to do business in Virginia, or (ii) file an irrevocable letter of credit satisfactory to the Tax Commissioner as to the bank or savings institution, the form and substance, and payable to the Commonwealth in the face amount of approximately two times the anticipated average monthly amount in purchases of Virginia revenue stamps by the wholesale dealer as determined by the Commissioner. The letter of credit shall be from a bank incorporated or authorized to conduct banking business under the laws of the Commonwealth or authorized to do business in the Commonwealth under the banking laws of the United States, or a federally insured savings institution located in the Commonwealth. Such bond or irrevocable letter of credit shall be conditioned upon payment of the tax imposed by this chapter relating to Virginia revenue stamps obtained by the wholesale dealer from the Department (without concurrent payment of the tax) for which such tax, net of any applicable discount described in subsection A, shall be paid within the 30 days immediately following the date that the related revenue stamp or stamps were provided by the

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58 Department to such wholesale dealer. Any such bond shall be so written that, on timely payment of the
59 premium thereon, it shall continue in force from year to year unless sooner terminated.

60 2. Any surety on a bond filed by any wholesale dealer shall be released and discharged from any and
61 all liability to the Commonwealth accruing on such bond after the expiration of 60 days from the date
62 upon which such surety shall have lodged with the Commissioner written request to be released and
63 discharged. But such request shall not operate to relieve, release or discharge such surety from any
64 liability already accrued or which shall accrue before the expiration of such 60-day period. The
65 Commissioner shall, promptly on receipt of such notice, notify the wholesale dealer who furnished such
66 bond. Unless such dealer on or before the expiration of such 60 days' notice files with the
67 Commissioner a new bond or letter of credit that meets all the conditions described in subdivision 1, the
68 Commissioner shall forthwith require the wholesale dealer to pay the tax imposed under this chapter
69 concurrent with obtaining revenue stamps from the Department.

70 In the event that liability upon the bond or letter of credit filed by the wholesale dealer with the
71 Commissioner shall be discharged or reduced, whether by judgment rendered, payment made or
72 otherwise, or if in the opinion of the Commissioner any surety on the bond becomes unsatisfactory or
73 unacceptable, then the Commissioner may require the filing of a new bond or letter of credit. Unless
74 such new bond or letter of credit meets all the conditions described in subdivision 1, the Commissioner
75 shall forthwith require the wholesale dealer to pay the tax imposed under this chapter concurrent with
76 obtaining revenue stamps from the Department.

77 3. Notwithstanding any other provision in this subsection, the Tax Commissioner, for good cause,
78 shall require a wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining
79 revenue stamps from the Department, regardless of whether or not such dealer has filed or agreed to file
80 the bond or letter of credit described in this subsection.

81 C. In addition to any other penalties provided by law, the Department may revoke the permit issued,
82 in accordance with § 58.1-1011, to any person who violates any provision of this section.

83 § 58.1-1021.03. ~~(For taxable sales or purchases occurring on or after March 1, 2005)~~ Monthly return
84 and payments of tax.

85 A. Every wholesale dealer subject to the tax imposed under this article shall, beginning with the
86 month of April 2005, file a monthly return no later than the tenth of each month on a form prescribed
87 by the Department, covering the sale of tobacco products by such dealer, for which a tax is imposed
88 pursuant to subsection A of 58.1-1021.02, during the preceding month. The return shall contain or be
89 accompanied by such further information as the Department shall require. The wholesale dealer, at the
90 time of filing the return, shall pay to the Department the tax imposed under subsection A of
91 § 58.1-1021.02 on the sales price for each such package of tobacco product sold in the preceding month.

92 B. Every retail dealer subject to the tax imposed under this article shall, beginning with the month of
93 April 2005, file a monthly return no later than the tenth of each month on a form prescribed by the
94 Department, covering the purchase of tobacco products by such dealer, for which a tax is imposed
95 pursuant to subsection B of 58.1-1021.02, during the preceding month. The return shall contain or be
96 accompanied by such further information as the Department shall require. The retail dealer, at the time
97 of filing the return, shall pay to the Department the tax imposed under subsection B of § 58.1-1021.02
98 on the purchase price for each such package of tobacco product purchased in the preceding month.

99 C. *For the purpose of compensating dealers for accounting for the tax imposed under this article, a*
100 *retail dealer or wholesale dealer shall be allowed when filing a monthly return and paying the tax to*
101 *deduct two percent of the tax otherwise due if the amount due was not delinquent at the time of*
102 *payment.*

103 *The Tax Commissioner shall make a written certification to the Comptroller no later than the*
104 *twentieth day of each month in regard to all such deductions taken by retail dealers and wholesale*
105 *dealers for returns filed in the immediately preceding month. The certification shall provide the amount*
106 *of all such deductions taken by such dealers for tax paid that was not delinquent at the time of payment.*
107 *No later than five business days after receiving the Tax Commissioner's certification, the Comptroller*
108 *shall make a deposit from the general fund equal to such amount certified into the Virginia Health Care*
109 *Fund established under § 32.1-366.*