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HOUSE BILL NO. 612

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact § 58.1-1003 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 58.1-1003.1, relating to cigarette tax; credit for bad debts.

Patron—O'Bannon

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-1003 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 58.1-1003.1 as follows:

§ 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 the~~ 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 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 (i) the name and address of both the manufacturer of the cigarettes and the entity from which the cigarettes were obtained, and (ii) *include the required documentation for and detail the amount and source of any bad debt deductions being taken by the stamping agent pursuant to § 58.1-1003.1.*

D. Any stamping agent who fails or refuses to comply with any of the above provisions shall have such agent's permit to affix revenue stamps revoked by the Commissioner. 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.

§ 58.1-1003.1. *Bad debt; deduction; definition.*

A. *Any stamping agent may deduct the amount of bad debts from the tax imposed by this chapter. The amount deducted must be charged off as uncollectible on the books of the stamping agent. If a person pays all or part of a bad debt with respect to which a stamping agent claimed a deduction under this section, the stamping agent shall be liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received and shall remit these taxes together with its next report to the Department pursuant to subsection C of § 58.1-1003.*

B. *Any claim for a bad debt deduction under this section shall be supported by all of the following:*

(i) *a copy of the original invoice;*
 (ii) *evidence that the cigarettes described in the invoice were delivered to the person who ordered them; and*
 (iii) *evidence that the person who ordered and received the cigarettes did not pay the stamping agent for the cigarettes and that the stamping agent used reasonable collection practices in attempting to collect the debt.*

C. *As used in this section, "bad debt" means the taxes under this chapter attributable to any portion*

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59 of a debt that is related to a sale of cigarettes subject to tax under this chapter that is not otherwise
60 deductible or excludable, that has become worthless or uncollectible in the time period between the date
61 when taxes accrue to the Department for the stamping agents' preceding tax return and the date when
62 taxes accrue to the Department for the present return, and that is eligible to be claimed, or could be
63 eligible to be claimed if the stamping agent kept accounts on an accrual basis, as a deduction pursuant
64 to section 166 of the Internal Revenue Code. A bad debt shall not include (i) any interest on the
65 wholesale price of cigarettes, (ii) uncollectible amounts on property that remain in the possession of the
66 stamping agent until the full purchase price is paid, (iii) expenses incurred in attempting to collect any
67 account receivable or any portion of the debt recovered, (iv) any accounts receivable that have been
68 sold to a third party for collection, and (v) repossessed property.