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HOUSE BILL NO. 2389

Offered January 14, 2009

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A BILL to amend and reenact §§ 58.1-1001, 58.1-1009, 58.1-1011, 58.1-1021.01, 58.1-1021.02, and 58.1-1021.03 of the Code of Virginia, relating to cigarette and tobacco products taxes.

 Patron—Brink

 Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1001, 58.1-1009, 58.1-1011, 58.1-1021.01, 58.1-1021.02, and 58.1-1021.03 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-1001. Tax levied; rate.

A. Except as provided in subsection B, 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 on each such cigarette sold, stored or received before August 1, 2004; an excise tax of one cent on each such cigarette sold, stored or received on and after August 1, 2004, through midnight on June 30, 2005; and an excise tax of 1.5 cents on each such cigarette sold, stored or received on and after July 1, 2005, *through midnight on June 30, 2009; and an excise tax of three cents on each such cigarette sold, stored or received on and after July 1, 2009.*

B. In addition to all other taxes now imposed by law, every person within the Commonwealth who sells, stores, or receives roll-your-own tobacco, for the purpose of distribution within the Commonwealth, shall pay to the Commonwealth a cigarette excise tax at the rate of 10% of the manufacturer's sales price of such roll-your-own tobacco.

C. The revenues generated by the taxes imposed under this section on and after August 1, 2004, shall be collected by the Department and deposited into the Virginia Health Care Fund established under § 32.1-366.

§ 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 equal to two percent of the total charged to the stamping agent by the Department for the purchase of the revenue stamps. The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all discounts allowed to stamping agents pursuant to this subsection and such amount shall be taken into consideration in preparing the official estimate of the total revenues to be collected during the fiscal year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available for programs financed by the Virginia Health Care Fund as a result of such discounts shall be made up by the general fund.~~

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

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59 current permit issued pursuant to § 58.1-1011 prior to collecting the tax imposed under this chapter from
60 such wholesale dealer. Such wholesale dealers shall be allowed to obtain the stamps from the
61 Department without concurrent payment of the tax only if the conditions of this subsection are satisfied.

62 In order to obtain Virginia revenue stamps without concurrent payment of the tax imposed under this
63 chapter, a wholesale dealer shall (i) file a bond with a corporate surety licensed to do business in
64 Virginia, or (ii) file an irrevocable letter of credit satisfactory to the Tax Commissioner as to the bank or
65 savings institution, the form and substance, and payable to the Commonwealth in the face amount of
66 approximately two times the anticipated average monthly amount in purchases of Virginia revenue
67 stamps by the wholesale dealer as determined by the Commissioner. The letter of credit shall be from a
68 bank incorporated or authorized to conduct banking business under the laws of the Commonwealth or
69 authorized to do business in the Commonwealth under the banking laws of the United States, or a
70 federally insured savings institution located in the Commonwealth. Such bond or irrevocable letter of
71 credit shall be conditioned upon payment of the tax imposed by this chapter relating to Virginia revenue
72 stamps obtained by the wholesale dealer from the Department (without concurrent payment of the tax)
73 for which such tax, net of any applicable discount described in subsection A, shall be paid within the 30
74 days immediately following the date that the related revenue stamp or stamps were provided by the
75 Department to such wholesale dealer. Any such bond shall be so written that, on timely payment of the
76 premium thereon, it shall continue in force from year to year unless sooner terminated.

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

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

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

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

100 § 58.1-1011. Qualification for permit to affix Virginia revenue stamps; penalty.

101 Only manufacturers, wholesale dealers and retail dealers may be permitted as stamping agents. It
102 shall be unlawful for any person to purchase, possess or affix Virginia revenue stamps without first
103 obtaining a permit to do so from the Department. Every manufacturer, wholesale dealer or retail dealer
104 who desires to qualify as a stamping agent with the Department shall make application to the
105 Department on forms prescribed for this purpose, which shall be supplied upon request. The application
106 forms will require such information relative to the nature of business engaged in by the applicant as the
107 Department deems necessary to the qualifying of the applicant as a stamping agent. The Department
108 shall conduct a background investigation, to include a Virginia Criminal History Records search, and
109 fingerprints of the applicant, or its responsible principals, managers, and other persons engaged in
110 handling and stamping cigarettes at the licensable locations, that shall be submitted to the Federal
111 Bureau of Investigation if the Department determines a National Criminal Records search is necessary,
112 on applicants for licensure as cigarette tax stamping agents. The Department may refuse to issue a
113 stamping permit or may suspend, revoke or refuse to renew a stamping permit issued to any person,
114 partnership, corporation, limited liability company or business trust, if it determines that the principals,
115 managers, and other persons engaged in handling and stamping cigarettes at the licensable location of
116 the applicant has been (i) found guilty of any fraud or misrepresentation in any connection, (ii)
117 convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling,
118 perjury, bribery, treason, or racketeering, or (iii) convicted of a felony. Anyone who knowingly and
119 willfully falsifies, conceals or misrepresents a material fact or knowingly and willfully makes a false,
120 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 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.

§ 58.1-1021.01. Definitions.

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

"Distributor" means (i) any person engaged in the business of selling tobacco products in the Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any tobacco products for sale; (ii) any person who makes, manufactures, fabricates, or stores tobacco products in the Commonwealth for sale in the Commonwealth; (iii) any person engaged in the business of selling tobacco products outside the Commonwealth who ships or transports tobacco products to any person in the business of selling tobacco products in the Commonwealth; or (iv) any retail dealer in possession of untaxed tobacco products in the Commonwealth.

"Manufacturer" means a person who manufactures or produces tobacco products and sells tobacco products to a distributor.

"Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the manufacturer's tobacco products.

"Manufacturer's sales price" means the actual price for which a manufacturer, manufacturer's representative, or any other person sells tobacco products to an unaffiliated distributor.

"Moist snuff" means any finely cut, ground, or powdered tobacco, other than dry snuff that is intended to be placed in the mouth.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Retail dealer" means every person who sells or offers for sale any tobacco product to consumers.

"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; or (iii) "pipe tobacco" as defined in § 5702 (n) of the Internal Revenue Code, and as such section may be amended.

§ 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 upon the privilege of selling or dealing in tobacco products in the Commonwealth by any person engaged in business as a distributor thereof, at the following rates:

1. Upon each can or package of moist snuff, the rate of \$0.25 per ounce with a proportionate tax at the same rate on all fractional parts of an ounce, which tax shall be computed based on the net weight listed by the manufacturer.

2. Upon tobacco products other than moist snuff, the rate of 10 percent of the manufacturer's sales price of such tobacco products.

Such tax shall be imposed at the time the distributor (i) brings or causes to be brought into the Commonwealth from outside the Commonwealth tobacco products for sale; (ii) makes, manufactures, or fabricates tobacco products in the Commonwealth for sale in the Commonwealth; or (iii) ships or transports tobacco products to retailers in the Commonwealth to be sold by those retailers. It is the intent and purpose of this article that the distributor who first possesses the tobacco product subject to this tax in the Commonwealth shall be the distributor liable for the tax. It is further the intent and purpose of this article to impose the tax once, and only once on all tobacco products for sale in the Commonwealth.

B. No tax shall be imposed pursuant to this section upon tobacco products not within the taxing

power of the Commonwealth under the Commerce Clause of the United States Constitution.

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

A. Every distributor subject to the tax imposed under this article shall file a monthly return no later than the twentieth of each month on a form prescribed by the Department, covering the purchase of tobacco products by such distributor during the preceding month, for which tax is imposed pursuant to subsection A of § 58.1-1021.02, during the preceding month. Each return shall show the quantity and manufacturer's sales price of each tobacco product (i) brought, or caused to be brought, into the Commonwealth for sale; and (ii) made, manufactured, or fabricated in the Commonwealth for sale in the Commonwealth during the preceding calendar month. Every licensed distributor outside the Commonwealth shall in a like manner file a return showing the quantity and manufacturer's sales price of each tobacco product shipped or transported to retailers in the Commonwealth to be sold by those retailers, during the preceding calendar month. The return shall be made on forms furnished or prescribed by the Department and shall contain or be accompanied by such further information as the Department shall require. The distributor, at the time of filing the return, shall pay to the Department the tax imposed under subsection A of § 58.1-1021.02 on the manufacturer's sales price for each such package of tobacco product purchased in the preceding month on which tax is due.

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

The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all discounts allowed to retail or wholesale dealers pursuant to this subsection and such amount shall be taken into consideration in preparing the official estimate of the total revenues to be collected during the fiscal year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available for programs financed by the Virginia Health Care Fund as a result of such discounts shall be made up by the general fund.

2. That the Tax Commissioner shall establish guidelines and rules for transitional procedures in regard to the increase in the state cigarette tax and the tax on tobacco products pursuant to the provisions of this act. The development of such guidelines and rules by the Tax Commissioner shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

3. That in no event shall a discount be available for revenue stamps bearing the cigarette excise tax rate effective on or after July 1, 2009.

4. That the provisions of this act amending and reenacting §§ 58.1-1021.01 and 58.1-1021.02 of the Code of Virginia are effective July 1, 2009.

5. That the provisions of this act amending and reenacting § 58.1-1021.03 of the Code of Virginia are effective beginning with the return for June 2009 due in July 2009.