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HOUSE BILL NO. 2645

Offered January 23, 2009

A BILL to amend and reenact §§ 58.1-1021.01 and 58.1-1021.02 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-1021.02:1, relating to the tobacco products tax; moist snuff.

Patron—Kilgore

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1021.01 and 58.1-1021.02 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-1021.02:1 as follows:

§ 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 a tobacco product that is any finely cut, ground, or powdered tobacco that is not intended to be smoked but shall not include any finely cut, ground, or powdered tobacco that is intended to be placed in the nasal cavity.

"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 ~~rate~~ following rates:

1. For moist snuff, \$0.26 per ounce, to be prorated for any fractional part of an ounce. The tax shall be computed based on the net weight as listed by the manufacturer on the package in accordance with federal law.

2. Upon tobacco products other than moist snuff, at 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.

C. For the fiscal year beginning July 1, 2009, and for each fiscal year thereafter, 50 percent of the amount by which all revenues collected pursuant to this section exceed the amount collected for

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59 *smokeless tobacco products pursuant to this section for the fiscal year ending June 30, 2009, shall be*
60 *deposited into a special nonreverting trust fund established in the state treasury on the books of the*
61 *Comptroller. The fund, to be known as the Tobacco Enforcement Fund, shall be appropriated to the*
62 *Office of the Attorney General exclusively for execution of his investigative, prosecution, and other*
63 *enforcement duties arising from or related to: (i) the Master Settlement Agreement as that term is*
64 *defined in § 3.2-4200; (ii) §§ 3.2-4200 through 3.2-4218; (iii) §§ 58.1-1001 through 58.1-1021.04:5; (iv)*
65 *Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2; (v) tobacco-related investigations and*
66 *enforcement actions under Chapter 13 (§ 18.2-512 et seq.) of Title 18.2; and (vi) such other tobacco*
67 *related statutes, regulations, or agreements of a similar nature and like goal that may be subsequently*
68 *adopted or amended, and other enactments designed to ensure compliance with requirements placed*
69 *upon manufacturers, wholesalers, distributors, retailers, or others dealing in cigarettes or tobacco*
70 *products.*

71 *§ 58.1-1021.02:1. Monthly reports by manufacturers of tobacco products.*

72 *Each manufacturer that ships tobacco products to any person located in the Commonwealth shall file*
73 *a report with the Department no later than the 20th day of each month identifying all such shipments*
74 *made by the manufacturer during the preceding month. Such reports shall identify the names and*
75 *addresses of the persons within the Commonwealth to whom the shipments were made and the quantities*
76 *of tobacco products shipped, by type of product and brand.*