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HOUSE BILL NO. 820

House Amendments in [] - February 3, 2010

A BILL to amend and reenact §§ 58.1-1013 and 58.1-1017 of the Code of Virginia, relating to penalties for unstamped cigarettes.

Patron Prior to Engrossment—Delegate Surovell

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1013 and 58.1-1017 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-1013. Penalty for failing to affix stamps; subsequent violations of article.

Any person who has been issued a permit to affix revenue stamps by the Department and fails to properly affix the required stamps to any cigarettes pursuant to the provisions of this chapter shall be required to pay as part of the tax imposed hereunder, a civil penalty of \$250, if the amount of unstamped cigarettes does not exceed 100 packs, or a penalty of \$500, if the amount of unstamped cigarettes exceeds 100 packs, to be assessed and collected by the Department as other taxes are collected, of (i) \$2.50 per pack, up to \$500, for the first violation by a legal entity within a 36-month period; (ii) \$5.00 per pack, up to \$1,000, for the second violation by the legal entity within a 36-month period; and (iii) \$10 per pack, up to \$50,000, for the third and any subsequent violation by the legal entity within a 36-month period. Where willful intent exists to defraud the Commonwealth of the tax levied under this chapter, such person shall be required to pay a civil penalty of \$2,500 \$25 per pack, up to \$250,000. It shall be prima facie evidence of intent to defraud when the number of such unstamped cigarettes exceeds either 30 packs or 5% five percent of the cigarettes in the place of business of such person, whichever is greater. Notwithstanding the immediately preceding threshold limits, if the number of unstamped packs exceeds 500 packs, it shall be prima facie evidence of intent to defraud.

Each pack of cigarettes not having proper stamps affixed thereto as herein required shall be deemed a separate offense for purposes of the monetary penalties imposed by this section. Any cigarettes in the place of business of any person required by the provisions of this chapter to stamp the same shall be prima facie evidence that they are intended for sale.

Any person who has been found guilty of violating any of the provisions of this article and who, after being punished by fine, penalty, assessment or imprisonment, is guilty of a second or subsequent violation of this chapter shall, upon being found guilty of such second offense, have his or its permit revoked by the Department, and no further permit shall be issued or granted to such person for a period of one year from the date the permit has been revoked. [No civil penalty shall be imposed under this section for any unstamped cigarettes if a civil penalty under § 58.1-1017 has been paid for such unstamped cigarettes.]

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

A. Any person, except as otherwise provided by law, who sells, purchases, transports, receives or possesses unstamped cigarettes shall be required to pay any tax owed pursuant to this chapter. In addition, such person shall be required to pay a civil penalty of (i) \$2.50 per pack, up to \$500, for the first violation by a legal entity within a 36-month period; (ii) \$5 per pack, up to \$1,000, for the second violation by the legal entity within a 36-month period; and (iii) \$10 per pack, up to \$50,000, for the third and any subsequent violation by the legal entity within a 36-month period, to be assessed and collected by the Department as other taxes are collected. In addition, where willful intent exists to defraud the Commonwealth of the tax levied under this chapter, such person shall be required to pay a civil penalty of \$25 per pack, up to \$250,000.

B. 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 subsection. Each pack of cigarettes sold, purchased, transported or possessed shall be considered a separate offense.

B C. 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. In addition, the

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59 Department may impose a penalty, to be assessed and collected by the Department as other taxes are
60 collected, not to exceed \$2,500 per pack on any person for violation of this subsection. Each pack of
61 cigarettes sold, purchased, transported, or possessed shall be considered a separate offense.

62 C D. If a person who (i) has not been issued a permit to affix revenue stamps by the Department, as
63 provided in § 58.1-1011, or (ii) is not a retail dealer who has lawfully purchased cigarettes from such
64 permit holder has in his possession within the Commonwealth more than 30 packages of unstamped
65 cigarettes, such possession shall be presumed to be for the purpose of evading the payment of the taxes
66 due thereon. [*No civil penalty shall be imposed under this section for any unstamped cigarettes if a*
67 *civil penalty under § 58.1-1013 has been paid for such unstamped cigarettes.*]