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SENATE BILL NO. 478

Offered January 13, 2010

Prefiled January 13, 2010

A *BILL to amend and reenact §§ 58.1-1021.01, 58.1-1021.02, 58.1-1021.03, and 58.1-1021.05 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—Watkins

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1021.01, 58.1-1021.02, 58.1-1021.03, and 58.1-1021.05 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 consisting of 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; Tobacco Enforcement Fund established.

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. Upon each package of moist snuff, at the rate of \$0.17 per ounce with a proportionate tax at the same rate on all fractional parts 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.

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59 C. A distributor of moist snuff that calculates and pays the tax under subdivision A 1 in good faith
60 reliance on the net weight listed by the manufacturer on the package or on the manufacturer's invoice
61 shall not be liable for additional tax, or for interest or penalties, solely by reason of a subsequent
62 determination that such weight information was incorrect.

63 D. For the fiscal year beginning July 1, 2010, and for each fiscal year thereafter, 50 percent of the
64 amount by which all revenues collected pursuant to this section exceed the amount of revenues collected
65 for smokeless tobacco products pursuant to this section for the fiscal year ending June 30, 2010, shall
66 be deposited into a special nonreverting trust fund established in the state treasury on the books of the
67 Comptroller. The fund shall be known as the Tobacco Enforcement Fund, hereafter referred to as "the
68 Fund." Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any
69 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert
70 to the general fund but shall remain in the Fund. All moneys in the Fund, as provided in the general
71 appropriation act, shall be appropriated exclusively for any enforcement duties arising from or related
72 to: (i) the Master Settlement Agreement as that term is defined in § 3.2-4200; (ii) §§ 3.2-4200 through
73 3.2-4219; (iii) §§ 58.1-1000 through 58.1-1021.04:5; (iv) Article 10 (§ 18.2-246.6 et seq.) of Chapter 6
74 of Title 18.2; (v) tobacco-related investigations and enforcement actions under Chapter 13 (§ 18.2-512
75 et seq.) of Title 18.2; and (vi) such other tobacco related statutes, regulations, or agreements of a
76 similar nature and like goal that may be subsequently adopted or amended, and other enactments
77 designed to ensure compliance with requirements placed upon manufacturers, wholesalers, distributors,
78 retailers, or others dealing in cigarettes or tobacco products.

79 § 58.1-1021.02:1. Annual reports by manufacturers of tobacco products.

80 Each manufacturer that ships tobacco products to any person located in the Commonwealth shall file
81 a report with the Department no later than the twentieth of January in each year identifying all such
82 shipments made by the manufacturer during the preceding year. Such reports shall identify the names
83 and addresses of the persons within the Commonwealth to whom the shipments were made and the
84 quantities of tobacco products shipped, by type of product and brand.

85 § 58.1-1021.03. Monthly return and payments of tax.

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

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

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

110 § 58.1-1021.05. Use of revenues.

111 ~~The~~ Except as provided in subsection D of § 58.1-1021.02, the revenues generated by the taxes
112 imposed under this article shall be collected by the Department and deposited into the Virginia Health
113 Care Fund established under § 32.1-366.

114 **2. That the provisions of this act shall become effective on January 1, 2011.**