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HOUSE BILL NO. 2038

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact § 58.1-3832 of the Code of Virginia, relating to enforcement of the local cigarette tax.

Patron—Peace

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-3832 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-3832. Local ordinances to administer and enforce local taxes on sale or use of cigarettes.

A. Any county, city or town having a tax upon the sale or use of cigarettes may by ordinance, provide for the administration and enforcement of any such cigarette tax, *which ordinance shall require that such county, city or town adhere to the guidelines and rules established by the Department related to cigarette tax enforcement.* ~~Such~~ If such local ordinance provides for the use of a tax stamp or meter impression as evidence of payment of the tax, it may also:

1. Provide for the registration of any distributor, wholesaler, vendor, retailer or other person selling, storing or possessing cigarettes within or transporting cigarettes within or into such taxing jurisdiction for sale or use. Such registration may be conditioned upon the filing of a bond with a surety company authorized to do business in Virginia as surety, which bond shall not exceed one and one-half times the average monthly liability of such taxpayer. The county, city or town may revoke registration if such bond is impaired, but for no other reason. Any such distributor, wholesaler, retailer or other person whose business and residence is outside the taxing jurisdiction, who shall sell, store or possess in the taxing jurisdiction therein any cigarettes shall, by virtue of such sale, storage or possession submit himself to its legal jurisdiction and appoint as his attorney for any service of lawful process such officer or person as may be designated in the local ordinance for that purpose. A copy of any such process served on the said officer or person shall be sent forthwith by registered mail to the distributor, wholesaler or retailer.

2. Provide for the use of a tax stamp or meter impression as evidence of payment of the tax or other method or system of reporting payment and collection of such tax.

3. Provide that tobacco products found in quantities of more than six cartons within the taxing jurisdiction shall be conclusively presumed for sale or use within the jurisdiction and may be seized and confiscated if:

a. They are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and of the consignee or purchaser, and the brands and quantity of cigarettes so transported; or are in transit and accompanied by a bill of lading or other document which is false or fraudulent, in whole or in part; or

b. They are in transit and are accompanied by a bill of lading or other document indicating:

(1) A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid; unless the tax of the state or District of destination has been paid and the said products bear the tax stamps of that state or District; or

(2) A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia sales and use tax certificate, a Virginia retail cigarette license and, where applicable, both a business license and retail cigarette license issued by the local jurisdiction of destination; or

c. They are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subparagraph shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with the taxing jurisdiction that those cigarettes are temporarily within the taxing jurisdiction and will be sent to consignees or purchasers outside the jurisdiction in the normal course of business.

4. Provide that cigarettes and other property, other than motor vehicles, used in the furtherance of any illegal evasion of the local tax ~~so may be~~ seized and confiscated *and* may be disposed of by sale or other method deemed appropriate by the local taxing authority. No credit from any sale or other disposition shall be allowed toward any tax or penalties owed.

5. Provide that persons violating any provision thereof shall be deemed guilty of a Class 1 misdemeanor, and require the payment of penalties for late payment not to exceed 10 percent per month,

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59 penalties for fraud or evasion of the tax not to exceed fifty percent, and interest not to exceed three
60 quarters of one percent per month, upon any tax found to be overdue and unpaid. ~~The mere possession~~
61 ~~of untaxed cigarettes in quantities of not more than six cartons shall not be a violation of any such~~
62 ~~ordinance.~~

63 64. Provide for the forfeiture and sale of any property seized; provided, however, that proper notice
64 of such seizure shall be given to the known holders of property interests in such property and shall
65 include procedures for administrative appeal as well as affirmative defenses which may be asserted by
66 such holders which procedures must be set forth in reasonable detail.

67 75. Provide that any coin-operated vending machine, in which any cigarettes are found, stored or
68 possessed bearing a counterfeit or bogus cigarette tax stamp or impression or any unstamped tobacco
69 products, or any cigarettes upon which the tax has not been paid, may be declared contraband property
70 and shall be subject to confiscation and sale as provided in ~~subsection 6 subdivision 4~~. When any such
71 vending machine is found containing such cigarettes it shall be presumed that such cigarettes were
72 intended for distribution, sale or use therefrom. In lieu of immediate seizure and confiscation of any
73 vending machines used in an illegal evasion of the tax it may be sealed by appropriate enforcement
74 authorities to prevent continued illegal sale or removal of any cigarettes, and may be left unmoved until
75 other civil and criminal penalties are imposed or waived. Notice requirements shall be the same as if the
76 machine had been seized. Such seal may be removed and the machine declared eligible for operation
77 only by authorized enforcement authorities. Nothing in this section shall prevent seizure and confiscation
78 of a vending machine at any time after it is sealed.

79 86. Provide that any counterfeit stamps or counterfeit impression devices may also be seized and
80 confiscated.

81 97. Any county, city or town may enact an ordinance which would delegate its administrative and
82 enforcement authority under its cigarette tax ordinance to one agency or authority pursuant to the
83 provisions of § 15.2-1300. Such agency or authority ~~may promulgate rules and regulations governing the~~
84 ~~display of cigarette stamps in vending machines, tax liens against property of taxpayers hereunder,~~
85 ~~extend varying discount rates and establish different classes of taxpayers or those required to collect and~~
86 ~~remit the tax, requirements concerning keeping and production of records, administrative and jeopardy~~
87 ~~assessment of tax where reasonably justified, required notice to authorities of sale of taxpayer's business,~~
88 ~~audit requirements and authority, and criteria for authority of distributors and others to possess untaxed~~
89 ~~cigarettes and any other provisions consistent with the powers granted by this section or necessarily~~
90 ~~implied therefrom shall be governed by and subject to the guidelines and rules established by the~~
91 ~~Department related to cigarette tax enforcement.~~ Such ordinance may further provide that such agency
92 or authority created may issue a common revenue stamp, employ legal counsel, bring appropriate court
93 action, in its own name where necessary to enforce payment of the cigarette taxes or penalties owed any
94 member jurisdiction and provide cigarette tax agents, and the necessary enforcement supplies and
95 equipment needed to effectively enforce the cigarette tax ordinance promulgated by each such county,
96 city or town. Any cigarette tax agents shall meet such requirements of training or experience as may be
97 promulgated from time to time by the enforcement authority when performing their duties and shall be
98 required to carry proper identification and may be armed for their own protection and for the
99 enforcement of such ordinance. Any such agent shall have the power of arrest upon reasonable and
100 probable cause that a violation of any tobacco tax ordinance has been committed.

101 *B. The Department shall develop, maintain and publicize the guidelines and rules related to cigarette*
102 *tax enforcement pursuant to this section. Such guidelines and rules shall include, but not be limited to,*
103 *(i) uniform penalties for the violation of stamping requirements and (ii) a uniform system of appeals*
104 *whereby a distributor, wholesaler, vendor, retailer or other person selling, storing or possessing*
105 *cigarettes within or transporting cigarettes within or into a taxing jurisdiction for sale or use may seek*
106 *review of any adverse action taken against him by such taxing jurisdiction.*

107 **2. That on and after July 1, 2011, any local ordinance enacted under the authority of § 58.1-3832**
108 **of the Code of Virginia prior to July 1, 2011, shall be void and ineffective to the extent that such**
109 **ordinance is inconsistent with the provisions of this act .**