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HOUSE BILL NO. 2332

Offered January 18, 2013

A BILL to amend and reenact §§ 58.1-1021.02, 58.1-1021.03, and 58.1-1021.04 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 58.1-1021.02:2, 58.1-1021.04:6, and 58.1-1021.04:7, relating to taxation of tobacco products; licensure of retailers.

Patron—Keam (By Request)

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1021.02, 58.1-1021.03, and 58.1-1021.04 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-1021.02:2, 58.1-1021.04:6, and 58.1-1021.04:7 as follows:

§ 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 on the sale of tobacco products in the Commonwealth by any person engaged in business as a distributor thereof *retail dealer*, at the following rates:

1. Upon each package of moist snuff, at the rate of \$0.18 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 *five percent of the retail sales price*.

2. For purposes of the tax under this article, loose leaf tobacco shall be classified as loose leaf tobacco single-units, loose leaf tobacco half pound-units, and loose leaf tobacco pound-units. Such tax shall be imposed on the distributor for loose leaf tobacco as follows: *at the rate of five percent of the retail sales price*.

a. \$0.21 for each loose leaf tobacco single-unit;
b. \$0.40 for each loose leaf tobacco half pound-unit;
c. \$0.70 for each loose leaf tobacco pound-unit; and
d. For any other unit, pouch, or package of loose leaf tobacco, the tax shall be by net weight and shall be \$0.21 per unit, pouch, or package plus \$0.21 for each increment of 4 ounces or portion thereof that the loose leaf tobacco exceeds 16 ounces.

The tax for each unit, pouch, or package of loose leaf tobacco shall be in accordance with the provisions of subdivisions a. through d. only and regardless of sales price.

3. Upon tobacco products other than moist snuff or loose leaf tobacco, at the rate of ~~10~~ *five* percent of the manufacturer's retail 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 *retail dealer sells the tobacco product to a consumer in the Commonwealth*. 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. A distributor that calculates and pays the tax pursuant to subdivision A 1 or A 2 in good faith reliance on the net weight listed by the manufacturer on the package or on the manufacturer's invoice shall not be liable for additional tax, or for interest or penalties, solely by reason of a subsequent determination that such weight information was incorrect.

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

A. Every distributor subject to *retail dealer* collecting 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 consumers 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 retail 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 sold in the Commonwealth during the preceding calendar month. Every licensed distributor *retail dealer* outside the Commonwealth shall in a like manner file a return showing

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HB2332

59 the quantity and ~~manufacturer's retail~~ sales price of each tobacco product shipped or transported to
60 ~~retailers sold to consumers~~ in the Commonwealth to be sold by those retailers, during the preceding
61 calendar month. The return shall be made on forms furnished or prescribed by the Department and shall
62 contain or be accompanied by such further information as the Department shall require. The ~~distributor~~
63 *retail dealer*, at the time of filing the return, shall pay to the Department the tax imposed under
64 subsection A of § 58.1-1021.02 for each such package of tobacco product purchased in the preceding
65 month on which tax is due.

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

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

76 **§ 58.1-1021.04. Failure to file return; fraudulent return; penalties; interest; overpayment of tax.**

77 A. When any ~~distributor~~ *retail dealer* fails to make any return or pay the full amount of the tax
78 required by this article, there shall be imposed a specific penalty to be added to the tax in the amount of
79 five percent if the failure is for not more than one month, with an additional two percent for each
80 additional month, or fraction thereof, during which the failure continues, not to exceed 20 percent in the
81 aggregate. In no case, however, shall the penalty be less than \$10 and such minimum penalty shall
82 apply whether or not any tax is due for the period for which such return was required. If such failure is
83 due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return
84 with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent
85 return where willful intent exists to defraud the Commonwealth of any tax due under this article, or in
86 the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such
87 tax, a specific penalty of 50 percent of the amount of the proper tax shall be assessed. All penalties and
88 interest imposed by this article shall be payable by the ~~distributor~~ *retail dealer* and collectible by the
89 Department in the same manner as if they were a part of the tax imposed.

90 B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this
91 article when any ~~distributor~~ *retail dealer* reports his purchases at 50 percent or less of the actual
92 amount.

93 C. Interest at a rate determined in accordance with § 58.1-15 shall accrue on the tax until the same is
94 paid.

95 No deficiency, interest or penalty shall be assessed for any month after the expiration of three years
96 from the date set for the filing of the return for such month, except in cases of fraud, or where no return
97 has been filed for such month.

98 D. If the Tax Commissioner determines that the amount paid the Commonwealth under this article in
99 regard to any monthly return was greater than the amount of tax due the Commonwealth, the excess
100 may be taken as a credit by the ~~distributor~~ *retail dealer* against a subsequent month's tax imposed under
101 this article. However, if such ~~distributor~~ *retail dealer* requests a refund, such excess shall be refunded to
102 the ~~distributor~~ *retail dealer* within 45 days of the request. The refund shall include interest at the rate
103 provided in § 58.1-15. Interest on such refunds shall accrue from the due date of the return to which
104 such excess is attributable to or the date such excess was paid to the Department, whichever is later, and
105 shall end on a date determined by the Department preceding the date of the refund check by not more
106 than seven days.

107 **§ 58.1-1021.04:6. Retail dealer's license; penalty.**

108 A. No person shall engage in the business of selling tobacco products as a retail dealer in the
109 Commonwealth without first having received a separate license from the Department for each location
110 or place of business. Each application for a retail dealer's license shall be accompanied by a \$30 fee
111 per year per location or place of business. Every application for such license shall be made on a form
112 prescribed by the Department, and the following information shall be provided on the application:

113 1. The name and address of the applicant. If the applicant is a firm, partnership, or association, the
114 name and address of each of its members shall be provided. If the applicant is a corporation, the name
115 and address of each of its principal officers shall be provided;

116 2. The address of the applicant's principal place of business;

117 3. The address of the place or places where the business to be licensed is to be conducted; and

118 4. Such other information as the Department may require for the purpose of the administration of
119 this article.

120 B. Once a license is granted pursuant to this section, such person shall be entitled to act as a

licensed retail dealer and, unless such person maintains a registered agent pursuant to Chapter 9 (§ 13.1-601 et seq.), 10 (§ 13.1-801 et seq.), 12 (§ 13.1-1000 et seq.) or 14 (§ 13.1-1200 et seq.) of Title 13.1 or Chapter 2.1 (§ 50-73.1 et seq.) or 2.2 (§ 50-73.79 et seq.) of Title 50, shall be deemed to have appointed the Clerk of the State Corporation Commission as the person's agent for the purpose of service of process relating to any matter or issue involving the person and arising under the provisions of this article.

The Department shall conduct a background investigation, to include a Virginia criminal history records search and fingerprints of the applicant, or the responsible principals, managers, and other persons engaged in handling tobacco products at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the Department deems a national criminal records search necessary, on applicants for licensure as tobacco products retail dealers. The Department may refuse to issue a retail dealer's license or may suspend, revoke, or refuse to renew a retail dealer's license issued to any person, partnership, corporation, limited liability company, or business trust if it determines that the principal, manager, or other person engaged in handling tobacco products at the licensable location of the applicant has been (i) found guilty of any fraud or misrepresentation in any connection; (ii) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering; or (iii) convicted of any other felony. Anyone who knowingly and willfully falsifies, conceals, or misrepresents a material fact or knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in any application for a retail dealer's license 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 retail dealer's license applications, conducting background investigations, and issuing retail dealer's licenses. Any amount 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.

C. Upon receipt of an application in proper form and payment of the required license fee, the Department shall, unless otherwise provided by this article, issue to the applicant a license, which shall permit the licensee to engage in business as a retail dealer at the place of business shown on the license. Each license, or a copy thereof, shall be prominently displayed in the place of business covered by the license. No license shall be transferable to any other person. Retail dealer's licenses issued pursuant to this section shall be valid for a period of five years from the date of issue unless revoked by the Department in the manner provided herein. The Department may at any time revoke the license issued to any retail dealer who is found guilty of violating or noncompliance with any of the provisions of this article, or any of the rules of the Department adopted and promulgated under authority of this chapter.

D. The Department shall compile and maintain a current list of licensed retail dealers. The list shall be updated on a semiannual basis and published on the Department's website, available to any interested party.

§ 58.1-1021.04:7. Certain records required of retail dealer; access to premises.

A. Each retail dealer shall keep in each licensed place of business complete and accurate records for that place of business, including itemized invoices of (i) tobacco products held and purchased, (ii) all sales of tobacco products made, and (iii) any records required by the Department.

All books, records, and other papers and documents required by this subsection shall be preserved, in a form prescribed by the Department, for a period of at least three years after the date of the documents or the date of the entries thereof appearing in the records, unless the Department authorizes, in writing, destruction or disposal of such documents at an earlier date.

B. At any time during usual business hours, duly authorized agents or employees of the Department may enter any place of business of a retail dealer and inspect the premises, the records required to be kept under this section, and the tobacco products contained therein to determine whether all the provisions of this article are being complied with fully. Refusal to permit such inspection by a duly authorized agent or employee of the Department shall be grounds for revocation of the retail dealer's license.

C. Each retail dealer who sells tobacco products to persons other than an ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices. Such person shall preserve legible copies of all such invoices for three years after the date of sale.

D. Any violation of § 58.1-1021.04:6 or this section shall be grounds for revocation of the retail dealer's license.

2. That the provisions of this act shall become effective on July 1, 2014.

3. That the Department of Taxation shall promulgate guidelines pursuant to this act to include necessary information for the licensure of retail dealers by January 1, 2014.