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HOUSE BILL NO. 1227

Offered January 17, 2014

A *BILL to amend and reenact §§ 58.1-1021.01, 58.1-1021.02, and 58.1-1021.03 of the Code of Virginia, relating to tobacco products tax; premium cigars.*

Patron—Fowler

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1021.01, 58.1-1021.02, and 58.1-1021.03 of the Code of Virginia are amended and reenacted 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.

"Loose leaf tobacco" means any leaf tobacco that is not intended to be smoked, but shall not include moist snuff. Loose leaf tobacco weight unit categories shall be as follows:

1. "Loose leaf tobacco half pound-unit" means a consumer sized unit, pouch, or package containing at least 4 ounces but not more than 8 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

2. "Loose leaf tobacco pound-unit" means a consumer sized unit, pouch, or package containing more than 8 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

3. "Loose leaf tobacco single-unit" means a consumer sized unit, pouch, or package containing less than 4 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

"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.

"Premium cigar" means a cigar that is made entirely by hand of all natural tobacco leaf, hand-constructed and hand-wrapped, with no filter or artificial flavors and weighing more than four pounds per one thousand cigars.

"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, *except for "premium cigar" as defined herein*; (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. "Tobacco products" shall also include loose leaf tobacco *and premium cigars*.

§ 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 following rates:

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59 1. Upon each package of moist snuff, at the rate of \$0.18 per ounce with a proportionate tax at the
60 same rate on all fractional parts of an ounce. The tax shall be computed based on the net weight as
61 listed by the manufacturer on the package in accordance with federal law.

62 2. For purposes of the tax under this article, loose leaf tobacco shall be classified as loose leaf
63 tobacco single-units, loose leaf tobacco half pound-units, and loose leaf tobacco pound-units. Such tax
64 shall be imposed on the distributor for loose leaf tobacco as follows:

65 a. \$0.21 for each loose leaf tobacco single-unit;

66 b. \$0.40 for each loose leaf tobacco half pound-unit;

67 c. \$0.70 for each loose leaf tobacco pound-unit; and

68 d. For any other unit, pouch, or package of loose leaf tobacco, the tax shall be by net weight and
69 shall be \$0.21 per unit, pouch, or package plus \$0.21 for each increment of 4 ounces or portion thereof
70 that the loose leaf tobacco exceeds 16 ounces.

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

73 3. Upon tobacco products other than moist snuff ~~or~~, loose leaf tobacco, *or premium cigars*, at the
74 rate of 10 percent of the manufacturer's sales price of such tobacco products.

75 Such tax shall be imposed at the time the distributor (i) brings or causes to be brought into the
76 Commonwealth from outside the Commonwealth tobacco products for sale; (ii) makes, manufactures, or
77 fabricates tobacco products in the Commonwealth for sale in the Commonwealth; or (iii) ships or
78 transports tobacco products to retailers in the Commonwealth to be sold by those retailers. It is the
79 intent and purpose of this article that the distributor who first possesses the tobacco product subject to
80 this tax in the Commonwealth shall be the distributor liable for the tax. It is further the intent and
81 purpose of this article to impose the tax once, and only once on all tobacco products for sale in the
82 Commonwealth.

83 *B. In addition to all other taxes now imposed by law, there is hereby imposed a tax on each retail*
84 *dealer for the privilege of selling or dealing in premium cigars in the Commonwealth. Such tax shall be*
85 *at a rate of 6.25 percent of the gross sales price of each premium cigar when sold or distributed in the*
86 *Commonwealth to an ultimate consumer.*

87 C. No tax shall be imposed pursuant to this section upon tobacco products not within the taxing
88 power of the Commonwealth under the Commerce Clause of the United States Constitution.

89 ~~C. D.~~ A distributor that calculates and pays the tax pursuant to subdivision A 1 or A 2 in good faith
90 reliance on the net weight listed by the manufacturer on the package or on the manufacturer's invoice
91 shall not be liable for additional tax, or for interest or penalties, solely by reason of a subsequent
92 determination that such weight information was incorrect.

93 **§ 58.1-1021.03. Monthly return and payments of tax.**

94 A. 1. Every distributor subject to the tax imposed under this article shall file a monthly return no
95 later than the twentieth of each month on a form prescribed by the Department, covering the purchase of
96 tobacco products, *other than premium cigars*, by such distributor during the preceding month, for which
97 tax is imposed pursuant to subsection A of § 58.1-1021.02, during the preceding month. Each return
98 shall show the quantity and manufacturer's sales price of each tobacco product (i) brought, or caused to
99 be brought, into the Commonwealth for sale; and (ii) made, manufactured, or fabricated in the
100 Commonwealth for sale in the Commonwealth during the preceding calendar month. Every licensed
101 distributor outside the Commonwealth shall in a like manner file a return showing the quantity and
102 manufacturer's sales price of each tobacco product shipped or transported to retailers in the
103 Commonwealth to be sold by those retailers, during the preceding calendar month.

104 2. *Every retail dealer subject to the tax imposed under this article shall file a monthly return no*
105 *later than the twentieth of each month on a form prescribed by the Department, covering the sales of*
106 *premium cigars by such retail dealer during the preceding month, for which tax is imposed pursuant to*
107 *subsection B of § 58.1-1021.02, during the preceding month. Each return shall show the quantity and*
108 *sales price of each premium cigar.*

109 3. The return *required by subdivision 1 or 2* shall be made on forms furnished or prescribed by the
110 Department and shall contain or be accompanied by such further information as the Department shall
111 require. The distributor, at the time of filing the return, shall pay to the Department the tax imposed
112 under subsection A of § 58.1-1021.02 for each such package of tobacco product purchased in the
113 preceding month on which tax is due.

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

118 The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all
119 discounts allowed to retail or wholesale dealers pursuant to this subsection and such amount shall be
120 taken into consideration in preparing the official estimate of the total revenues to be collected during the

121 fiscal year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding
122 available for programs financed by the Virginia Health Care Fund as a result of such discounts shall be
123 made up by the general fund.

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