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HOUSE BILL NO. 1590

Offered January 14, 2015

Prefiled January 8, 2015

A BILL to amend and reenact §§ 32.1-366, 58.1-1001, 58.1-1018, 58.1-1021.02, and 58.1-1021.05 of the Code of Virginia, relating to state tax on cigarettes and other tobacco products.

Patrons—Krupicka, BaCote, Hope, Kory, Lopez, McQuinn, Plum, Simon, Spruill, Tyler, Ward and Watts; Senators: Ebbin, Favola, Howell, Locke, Lucas and Puller

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-366, 58.1-1001, 58.1-1018, 58.1-1021.02, and 58.1-1021.05 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-366. Virginia Health Care Fund established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Health Care Fund, hereafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller and any moneys remaining in the Fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. For purposes of the Comptroller's preliminary and final annual reports required by § 2.2-813, however, all deposits to and disbursements from the Fund shall be accounted for as part of the general fund of the state treasury.

B. All revenue received by the Commonwealth *that is dedicated to the Fund* pursuant to the provisions of (i) §§ 58.1-1001 and 58.1-1018, (ii) Article 2.1 (§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1, and (iii) § 3.2-4203 shall be paid into the state treasury and deposited to the Fund. The Comptroller shall also deposit 40 percent of the Commonwealth's allocation pursuant to the Master Settlement Agreement with tobacco product manufacturers, as defined in § 3.2-3100, to the Fund. The Fund shall also consist of all recoveries received during a fiscal year resulting from expenditures incurred in the Medicaid program during a prior fiscal year or years to the extent that such amounts represent recoveries of state funds that would otherwise be deposited to the general fund of the state treasury.

§ 58.1-1001. Tax levied; rate.

A. Except as provided in subsection B, in addition to all other taxes now imposed by law, every person within this Commonwealth who sells, stores or receives cigarettes made of tobacco or any substitute thereof, for the purpose of distribution to any person within this Commonwealth, shall pay to this Commonwealth an excise tax of one and one-quarter mills on each such cigarette sold, stored or received before August 1, 2004; an excise tax of one cent on each such cigarette sold, stored or received on and after August 1, 2004, through midnight on June 30, 2005; ~~and an excise tax of 1.5 cents on each such cigarette sold, stored or received on and after July 1, 2005, through midnight on June 30, 2015;~~ *and an excise tax of 10 cents on each such cigarette sold, stored or received on and after July 1, 2015.*

B. In addition to all other taxes now imposed by law, every person within the Commonwealth who sells, stores, or receives roll-your-own tobacco, for the purpose of distribution within the Commonwealth, shall pay to the Commonwealth a cigarette excise tax at the rate of ~~10%~~ 60 percent of the manufacturer's sales price of such roll-your-own tobacco.

C. The revenues generated by the taxes imposed under this section ~~on and after August 1, 2004,~~ shall be collected by the Department and *distributed as follows: (i) the amount of revenues attributable solely to the increase in the tax rates enacted by the 2015 Session of the General Assembly shall be apportioned among all counties and cities and used by such localities as provided in subsections C and D of § 58.1-638 and (ii) the remaining revenues shall be deposited into the Virginia Health Care Fund established under § 32.1-366.*

D. The provisions of this section shall not apply to members of federal, state, county, city, or town law-enforcement agencies when possession of unstamped cigarettes is necessary in the performance of investigatory duties.

§ 58.1-1018. Tax imposed on storage, use or consumption of cigarettes; exemption of products on which sales tax has been paid.

An excise tax is hereby imposed on the storage, use or other consumption in this Commonwealth of cigarettes purchased at retail in an amount equal to that set out in § 58.1-1001. Every person storing, using or otherwise consuming in this Commonwealth cigarettes purchased at retail shall be liable for the tax imposed by this article, and the liability shall not be extinguished until the tax has been paid to this Commonwealth; however, if such cigarettes have attached thereto the requisite stamps or if the excise

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58 tax imposed by Article 1 (§ 58.1-1000 et seq.) has been paid by the seller of such cigarettes, then the
59 tax imposed by this article shall not be due.

60 The revenues generated by the tax imposed under this section ~~on and after August 1, 2004,~~ shall be
61 collected by the Department and *distributed as follows: (i) the amount of revenues attributable solely to*
62 *the increase in the tax rates enacted by the 2015 Session of the General Assembly shall be apportioned*
63 *among all counties and cities and used by such localities as provided in subsections C and D of*
64 *§ 58.1-638 and (ii) the remaining revenues shall be deposited into the Virginia Health Care Fund*
65 *established under § 32.1-366.*

66 **§ 58.1-1021.02. Tax on tobacco products.**

67 A. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon the
68 privilege of selling or dealing in tobacco products in the Commonwealth by any person engaged in
69 business as a distributor thereof, at the following rates:

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

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

76 a. ~~\$0.24~~ \$1.26 for each loose leaf tobacco single-unit;

77 b. ~~\$0.40~~ \$2.40 for each loose leaf tobacco half pound-unit;

78 c. ~~\$0.70~~ \$4.20 for each loose leaf tobacco pound-unit; and

79 d. For any other unit, pouch, or package of loose leaf tobacco, the tax shall be by net weight and
80 shall be ~~\$0.24~~ \$1.26 per unit, pouch, or package plus ~~\$0.24~~ \$1.26 for each increment of 4 ounces or
81 portion thereof that the loose leaf tobacco exceeds 16 ounces.

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

84 3. Upon tobacco products other than moist snuff or loose leaf tobacco, at the rate of ~~40~~ 60 percent of
85 the manufacturer's sales price of such tobacco products.

86 Such tax shall be imposed at the time the distributor (i) brings or causes to be brought into the
87 Commonwealth from outside the Commonwealth tobacco products for sale; (ii) makes, manufactures, or
88 fabricates tobacco products in the Commonwealth for sale in the Commonwealth; or (iii) ships or
89 transports tobacco products to retailers in the Commonwealth to be sold by those retailers. It is the
90 intent and purpose of this article that the distributor who first possesses the tobacco product subject to
91 this tax in the Commonwealth shall be the distributor liable for the tax. It is further the intent and
92 purpose of this article to impose the tax once, and only once on all tobacco products for sale in the
93 Commonwealth.

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

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

100 **§ 58.1-1021.05. Use of revenues.**

101 The revenues generated by the taxes imposed under this article shall be collected by the Department
102 and *distributed as follows: (i) the amount of revenues attributable solely to the increase in the tax rates*
103 *enacted by the 2015 Session of the General Assembly shall be apportioned among all counties and cities*
104 *and used by such localities as provided in subsections C and D of § 58.1-638 and (ii) the remaining*
105 *revenues shall be deposited into the Virginia Health Care Fund established under § 32.1-366.*