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HOUSE BILL NO. 1120

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact §§ 3.2-4209, 3.2-4215.1, 18.2-246.6, 32.1-366, 58.1-623.2, 58.1-1000, 58.1-1001, 58.1-1003, 58.1-1003.1, 58.1-1008.2, 58.1-1009, 58.1-1011, 58.1-1012, 58.1-1016, 58.1-1017, 58.1-1018, 58.1-1019, 58.1-1021, 58.1-3830, 58.1-3832, 58.1-3840, and 58.1-3907 of the Code of Virginia; to amend the Code of Virginia by adding in Article 1 of Chapter 10 of Title 58.1 sections numbered 58.1-1017.5 through 58.1-1017.12; and to repeal § 58.1-1003.2, Article 2.1 (§§ 58.1-1021.01 through 58.1-1021.05) of Chapter 10 of Title 58.1, and § 58.1-3831 of the Code of Virginia, relating to tobacco products taxes; penalties.

Patrons—Hope and Hayes

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-4209, 3.2-4215.1, 18.2-246.6, 32.1-366, 58.1-623.2, 58.1-1000, 58.1-1001, 58.1-1003, 58.1-1003.1, 58.1-1008.2, 58.1-1009, 58.1-1011, 58.1-1012, 58.1-1016, 58.1-1017, 58.1-1018, 58.1-1019, 58.1-1021, 58.1-3830, 58.1-3832, 58.1-3840, and 58.1-3907 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 10 of Title 58.1 sections numbered 58.1-1017.5 through 58.1-1017.12 as follows:

§ 3.2-4209. Reporting of information.

A. Not later than 20 days after the end of each calendar quarter, and more frequently if so directed by the Commissioner, each stamping agent shall submit to the Attorney General such information as the Attorney General requires to facilitate compliance with this article, including, but not limited to, a list by brand family of the total number of cigarettes for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The Attorney General may allow such information to be filed electronically. For roll-your-own tobacco, in lieu of the number of cigarettes sold, the Attorney General shall require that the stamping agent submit the total quantity in ounces, by brand family, of all such roll-your-own tobacco ~~in accordance with the invoice accompanying each shipment he initiates, as provided in subsection D of § 58.1-1003.2, or for which the stamping agent otherwise paid the tax due for such roll-your-own tobacco~~. The stamping agent shall maintain, and make available to the Commissioner and Attorney General, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Attorney General for a period of five years.

B. In addition to the information required to be submitted pursuant to subsection A or any other provision of law, the Attorney General may require a stamping agent, distributor or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer has complied, is in compliance, and will continue in compliance with this article and Article 1 (§ 3.2-4200 et seq.) of this chapter.

C. On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, a stamping agent shall provide to the requesting tobacco product manufacturer the total number of cigarettes, by brand family, which the stamping agent reported to the Attorney General pursuant to subsection A, provided that such information provided by the stamping agent to a tobacco manufacturer shall be limited to the brand families of that manufacturer as listed in the Directory established pursuant to § 3.2-4206. A stamping agent receiving a request pursuant to this subsection shall provide the requested information within 30 days from receipt of the request.

§ 3.2-4215.1. Authority of Attorney General; audit and investigation.

The Attorney General or his authorized representative shall have the authority to:

1. Conduct audits and investigations of (i) a nonparticipating manufacturer and its importers or a tobacco product manufacturer as defined in § 3.2-4200 that became a participating manufacturer after the Master Settlement execution date, as defined at section II (aa) of the Master Settlement Agreement, and its importers~~,~~*;* (ii) exclusive *cigarette* distributors, ~~retail dealers~~ *tobacco retailers,* stamping agents, and wholesale dealers, as *such terms are* defined in § 58.1-1000~~,~~*;* and (iii) persons or entities engaged in delivery sales as defined in § 18.2-246.6; and

2. Upon reasonable cause to believe that a violation of this article or of Article 1 (§ 3.2-4200 et seq.) of this chapter, or of Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1, or Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2 has occurred or is reasonably likely to occur, issue subpoenas, compel the

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attendance of witnesses, administer oaths, certify to official acts, take depositions within and without the Commonwealth, as now provided by law, and compel the production of pertinent books, payrolls, accounts, papers, records, documents, and testimony relevant to such investigation. If a person refuses, without good cause, to be examined or to answer a legal and pertinent question, or to produce a document or other evidence when ordered to do so by the Attorney General or his authorized representative, the Attorney General or his authorized representative may apply to the judge of the circuit court of the jurisdiction where such person is in attendance or located, upon affidavit, for an order returnable in no less than two nor more than five days, directing such person to show cause why he should not be examined, answer a legal or pertinent question or produce a document, record or other evidence. Upon the hearing of such, if the court determines that such person, without good cause, has refused to be examined or to answer legal or pertinent questions, or to produce a document, record or other evidence, the court may order compliance with the subpoena and assess all costs and reasonable attorney fees against such person. If the motion for an order is granted and the person thereafter fails to comply with the order, the court may make such orders as are provided for in the Rules of the Supreme Court of Virginia. Subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the circuit courts of the Commonwealth.

§ 18.2-246.6. Definitions.

For purposes of this article:

"Adult" means a person who is at least the legal minimum purchasing age.

"Board" means the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

"Consumer" means an individual who is not permitted as a wholesaler pursuant to § 58.1-1011 or who is not a retailer.

"Delivery sale" means any sale of cigarettes to a consumer in the Commonwealth regardless of whether the seller is located in the Commonwealth where either (i) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or (ii) the cigarettes are delivered by use of the mails or a delivery service. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or ~~retail dealer~~ *tobacco retailer,* as such terms are defined in § 58.1-1000, shall not be a delivery sale. A delivery of cigarettes, not through the mail or by a common carrier, to a consumer performed by the owner, employee or other individual acting on behalf of a retailer authorized to sell such cigarettes shall not be a delivery sale.

"Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

"Legal minimum purchasing age" is the minimum age at which an individual may legally purchase cigarettes in the Commonwealth.

"Mails" or "mailing" means the shipment of cigarettes through the United States Postal Service.

"Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

"Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

§ 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 pursuant to the provisions of (i) ~~§§ 58.1-1001 and 58.1-1018,~~ ~~(ii)~~ ~~Article 2.1 (§ 58.1-1021.01 et seq.) of~~ *§ 3.2-4203 and (ii)* Chapter 10 *(§ 58.1-1000 et seq.)* 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.

§ 58.1-623.2. Cigarette exemption certificate.

A. 1. Notwithstanding any other provision of law, all sales of cigarettes, as defined in § 58.1-1031, bearing Virginia revenue stamps in the Commonwealth shall be subject to the tax until the contrary is established. The burden of proving that a sale is not taxable is upon the dealer unless he takes from the taxpayer a cigarette exemption certificate issued by the Department to the taxpayer to the effect that the cigarettes are exempt under this chapter for the purposes of resale in the Commonwealth.

2. The cigarette exemption certificate mentioned in this section shall relieve the person who takes such certificate from any liability for the payment or collection of the tax on the sale of cigarettes, except upon notice from the Tax Commissioner or the taxpayer that such certificate is no longer acceptable.

3. If a taxpayer who gives a cigarette exemption certificate under this section makes any use of the property other than an exempt use or retention, demonstration, or display while holding the property for resale or distribution in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of the time the property or service is first used by him, and the cost of the property to him shall be deemed the sales price of such retail sale.

B. 1. Prior to issuing a cigarette exemption certificate under this section, the Department shall conduct a background investigation on the taxpayer for the certificate. The Department shall not issue a cigarette exemption certificate until at least 30 days have passed from the receipt of the application, unless the taxpayer qualifies for the expedited process set forth in subdivision 3, or any other expedited process set forth in guidelines issued pursuant to subsection L. If the taxpayer does not qualify for the expedited process, the Department shall inspect each location listed in the application and verify that any location that resells cigarettes meets the requirements prescribed in subsection E.

2. A taxpayer shall be required to pay an application fee, not to exceed $50, to the Department for a cigarette exemption certificate.

3. A taxpayer shall be eligible for an expedited process to receive a cigarette exemption certificate if the taxpayer possesses, at the time of filing an application for a cigarette exemption certificate, (i) an active license, in good standing, issued by the Department of Alcoholic Beverage Control pursuant to Title 4.1, as verified by electronic or other means by the Department, or (ii) an active tobacco products tax distributor's license, in good standing, issued by the Department pursuant to § ~~58.1-1021.04:1~~ *58.1-1017.9*. The Department may identify other categories of taxpayers who qualify for an expedited process through guidelines issued pursuant to subsection L. Taxpayers that qualify for an expedited process shall not be subject to the background check or the waiting period set forth in subdivision 1, nor shall such taxpayers be required to pay the application fee set forth in subdivision 2.

4. If a taxpayer has been denied a cigarette exemption certificate, or has been issued a cigarette exemption certificate that has subsequently been suspended or revoked, the Department shall not consider an application from the taxpayer for a new cigarette exemption certificate for six months from the date of the denial, suspension, or revocation.

C. The Department shall deny an application for a cigarette exemption certificate, or suspend or revoke a cigarette exemption certificate previously issued to a taxpayer, if the Department determines that:

1. The taxpayer is a person who is not 18 years of age or older;

2. The taxpayer is a person who is physically unable to carry on the business for which the application for a cigarette exemption certificate is filed, or has been adjudicated incapacitated;

3. The taxpayer has not resided in the Commonwealth for at least one year immediately preceding the application, unless in the opinion of the Department, good cause exists for the taxpayer to have not resided in the Commonwealth for the immediately preceding year;

4. The taxpayer has not established a physical place of business in the Commonwealth, as described in subsection E;

5. A court or administrative body having jurisdiction has found that the physical place of business occupied by the taxpayer, as described in subsection E, does not conform to the sanitation, health, construction, or equipment requirements of the governing body of the county, city, or town in which such physical place is located, or to similar requirements established pursuant to the laws of the Commonwealth;

6. The physical place of business occupied by the taxpayer, as described in subsection E, is not constructed, arranged, or illuminated so as to allow access to and reasonable observation of, any room or area in which cigarettes are to be sold;

7. The taxpayer is not an authorized representative of the business;

8. The taxpayer made a material misstatement or material omission in the application;

9. The taxpayer has defrauded, or attempted to defraud, the Department, or any federal, state, or local government or governmental agency or authority, by making or filing any report, document, or tax return required by statute or regulation that is fraudulent or contains a false representation of material fact, or the taxpayer has willfully deceived or attempted to deceive the Department, or any federal, state, or local government or governmental agency or authority, by making or maintaining business records required by statute or regulation that are false or fraudulent;

10. The Tax Commissioner has determined that the taxpayer has misused the certificate;

11. The taxpayer has knowingly and willfully allowed any individual, other than an authorized representative, to use the certificate;

12. The taxpayer has failed to comply with or has been convicted under any of the provisions of this chapter or Chapter 10 (§ 58.1-1000 et seq.) or any of the rules of the Department adopted or promulgated under the authority of this chapter or Chapter 10; however, no certificate shall be denied, suspended, or revoked on the basis of a failure to file a retail sales and use tax return or remit retail sales and use tax unless the taxpayer is more than 30 days delinquent in any filing or payment and has not entered into an installment agreement pursuant to § 58.1-1817; or

13. The taxpayer has been convicted under the laws of any state or of the United States of (i) any robbery, extortion, burglary, larceny, embezzlement, gambling, perjury, bribery, treason, racketeering, money laundering, other crime involving fraud under Chapter 6 (§ 18.2-168 et seq.) of Title 18.2, or crime that has the same elements of the offenses set forth in § 58.1-1017 or 58.1-1017.1, or (ii) a felony.

D. The provisions of § 58.1-623.1 shall apply to the suspension and revocation of exemption certificates issued pursuant to this section, mutatis mutandis.

E. A cigarette exemption certificate shall only be issued to a taxpayer who:

1. Has a physical place of business in the Commonwealth, owned or leased by him, where a substantial portion of the sales activity of the retail cigarette sales activity of the business is routinely conducted and that (i) satisfies all local zoning regulations; (ii) has sales and office space of at least 250 square feet in a permanent, enclosed building not used as a house, apartment, storage unit, garage, or other building other than a building zoned for retail business; (iii) houses all records required to be maintained pursuant to § 58.1-1007; (iv) is equipped with office equipment, including but not limited to, a desk, a chair, a Point of Sale System, filing space, a working telephone listed in the name of the taxpayer or his business, working utilities, including electricity and provisions for space heating, and an Internet connection and email address; (v) displays a sign and business hours and is open to the public during the listed business hours; and (vi) does not occupy the same physical place of business of any other taxpayer who has been issued a cigarette exemption certificate;

2. Possesses a copy of the (i) corporate charter and articles of incorporation in the case of a corporation, (ii) partnership agreement in the case of a partnership, or (iii) organizational registration from the Virginia State Corporation Commission in the case of an LLC; and

3. Possesses a local business license, if such local business license is required by the locality where the taxpayer's physical place of business is located.

F. A taxpayer with more than one physical place of business shall be required to complete only one application for a cigarette exemption certificate but shall list on the application every physical place of business in the Commonwealth where cigarettes are purchased, stored, or resold by the taxpayer or his affiliate. Upon approval of the application, the Department shall issue a cigarette exemption certificate to the taxpayer. The taxpayer shall be authorized to resell cigarettes only at the locations listed on the application. No cigarette exemption certificate shall be transferrable. For purposes of this subsection, a taxpayer shall be considered to have more than one physical place of business if the taxpayer owns or leases two or more physical locations in the Commonwealth where cigarettes are purchased, stored, or resold.

G. A cigarette exemption certificate issued to a taxpayer shall bear the address of the physical place of business occupied or to be occupied by the taxpayer in conducting the business of purchasing cigarettes in the Commonwealth. In the event that a taxpayer intends to move the physical place of business listed on a certificate to a new location, he shall provide written notice to the Department at least 30 days in advance of the move. A successful inspection of the new physical place of business shall be required by the Department prior to the issuance of a new cigarette exemption certificate bearing the updated address. If the taxpayer intends to change any of the required information relating to the physical places of business contained in the application for the cigarette exemption certificate submitted pursuant to subsection F, the taxpayer shall file an amendment to the application at least 30 days in advance of such change. The certificate with the original address shall become invalid upon the issuance of the new certificate, or 30 days after notice of the move is provided to the Department, whichever occurs sooner. A taxpayer shall not be required to pay a fee to the Department for the issuance of a new cigarette exemption certificate pursuant to this subsection.

H. The privilege of a taxpayer issued a cigarette exemption certificate to purchase cigarettes shall extend to any authorized representative of such taxpayer. The taxpayer issued a cigarette exemption certificate may be held liable for any violation of this chapter, Chapter 10 (§ 58.1-1000 et seq.), Chapter 10.1 (§ 58.1-1031 et seq.), or any related Department guidelines by such authorized representative.

I. A taxpayer issued a cigarette exemption certificate shall comply with the recordkeeping requirements prescribed in § 58.1-1007 and shall make such records available for audit and inspection as provided therein. A taxpayer issued a cigarette exemption certificate who fails to comply with such requirements shall be subject to the penalties provided in § 58.1-1007.

J. A cigarette exemption certificate granted by the Department shall be valid for five years from the

date of issuance. At the end of the five-year period, the cigarette exemption certificate of a taxpayer who qualifies for the expedited application process set forth in subdivision B 3 shall be automatically renewed and no fee shall be required. If a taxpayer does not qualify for the expedited application process, then such taxpayer shall apply to the Department to renew the new cigarette exemption certificate as set forth in subdivision B 1 and shall pay an application fee not to exceed $50 as set forth in subdivision B 2; however, the 30-day waiting period set forth in subdivision B 1 shall not apply.

K. No taxpayer issued a cigarette exemption certificate shall display the certificate, or a copy thereof, in the physical place of business where a substantial portion of the retail cigarette sales activity of the business is routinely conducted.

L. The Tax Commissioner shall develop guidelines implementing the provisions of this section, including but not limited to (i) defining categories of taxpayers who qualify for the expedited process, (ii) prescribing the form of the application for the cigarette exemption certificate, (iii) prescribing the form of the application for the expedited cigarette exemption certificate, (iv) establishing procedures for suspending and revoking the cigarette exemption certificate, and (v) establishing procedures for renewing the cigarette exemption certificate. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

M. For the purposes of this section:

"Authorized representative" means an individual who has an ownership interest in or is a current employee of the taxpayer who possesses a valid cigarette exemption certificate pursuant to this section.

CHAPTER 10.

~~CIGARETTE TAX~~*TOBACCO PRODUCTS TAXES.*

§ 58.1-1000. Definitions.

As used in this chapter, unless the context ~~clearly shows otherwise, the term or phrase~~ *requires a different meaning*:

"Authorized holder" means (i) a manufacturer; (ii) a wholesale dealer who is not duly qualified as a wholesale dealer stamping agent, but who possesses, or whose affiliate possesses, a valid cigarette exemption certificate issued pursuant to § 58.1-623.2; (iii) a stamping agent; (iv) a ~~retail dealer~~ *tobacco retailer* who possesses, or whose affiliate possesses, a valid cigarette exemption certificate issued pursuant to § 58.1-623.2; (v) an exclusive *cigarette* distributor; (vi) an officer, employee, or other agent of the United States or a state, or any department, agency, or instrumentality of the United States, a state, or a political subdivision of a state, having possession of cigarettes in connection with the performance of official duties; (vii) a person properly holding cigarettes that do not require stamps or tax payment pursuant to § 58.1-1010; or (viii) a common or contract carrier transporting cigarettes under a proper bill of lading or other documentation indicating the true name and address of the consignor or seller and the consignee or purchaser of the brands and the quantities being transported. Any person convicted of (a) any criminal offense under this chapter; (b) any offense involving the forgery of any documents, forms, invoices, or receipts related to the purchase or sale of ~~cigarettes or the purchase or sale of~~ tobacco products ~~as defined in § 58.1-1021.01~~; (c) any offense involving evasion or failure to pay a cigarette or tobacco product excise tax; or (d) any similar violation of an ordinance of any county, city, or town in the Commonwealth or the laws of any other state or of the United States is ineligible to be an authorized holder. For the purposes of this definition, "affiliate" means any entity that is a member of the same affiliated group, as such term is defined in § 58.1-3700.1.

"Carton" means 10 packs of cigarettes, each containing 20 cigarettes or eight packs, each containing 25 cigarettes.

"Cigarette" means ~~any product that contains nicotine, is intended to be burned and produces smoke from combustion under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is burned and functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition. The term "cigarette" includes "roll-your-own" tobacco, which means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."~~ *(i) any roll for smoking containing tobacco wrapped in paper or in any substance other than tobacco leaf; (ii) any roll for smoking containing tobacco, wrapped in any substance, weighing four and a half pounds or less per thousand rolls, except those rolls wrapped entirely in tobacco leaf that do not have a filter; and (iii) any roll for smoking containing tobacco wrapped in any substance, however labeled or named, which because of its appearance, its size, the type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling is likely to be offered*

to, purchased by, or consumed by consumers as a cigarette as defined in clause (i) or (ii). "Cigarette" does not include an electronic smoking device or roll-your-own tobacco.

"Cigarette manufacturer" means any tobacco product manufacturer as defined in § 3.2-4200.

"Distributor" means (i) any person engaged in the business of selling tobacco products, except cigarettes, in the Commonwealth that brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any tobacco products, except cigarettes, for sale; (ii) any person that makes, manufactures, fabricates, or stores tobacco products, except cigarettes, in the Commonwealth for sale in the Commonwealth; (iii) any person engaged in the business of selling tobacco products, except cigarettes, outside the Commonwealth that ships or transports tobacco products, except cigarettes, to any person in the business of selling tobacco products, except cigarettes, in the Commonwealth; or (iv) any tobacco retailer in possession of untaxed tobacco products, except cigarettes, in the Commonwealth. "Distributor" does not include an exclusive cigarette distributor.

~~"Exclusive distributor" means any individual, corporation, limited liability company, or limited liability partnership with its principal place of business in the Commonwealth that has the sole and exclusive rights to sell to wholesale dealers in the Commonwealth a brand family of cigarettes manufactured by a tobacco product manufacturer as defined in § 3.2-4200.~~

"Electronic smoking device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Electronic smoking device" includes any component, part, or accessory of the device, whether or not sold separately, and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine. "Electronic smoking device" does not include any battery or battery charger when sold separately. "Electronic smoking device" does not include drugs or devices, as such terms are defined in 21 U.S.C. § 321, or combination products, as such term is used in 21 U.S.C. § 353, if such drugs, devices, or combination products are authorized for sale by the U.S. Food and Drug Administration. "Electronic smoking device" does not include a cigarette.

"Exclusive cigarette distributor" means any individual, corporation, limited liability company, or limited liability partnership with its principal place of business in the Commonwealth that has the sole and exclusive rights to sell to wholesale dealers in the Commonwealth a brand family of cigarettes manufactured by a tobacco product manufacturer as defined in § 3.2-4200.

"Manufacturer" means any tobacco product manufacturer as defined in § 3.2-4200 *or a person that manufactures or produces tobacco products and sells tobacco products to a distributor*.

"Pack" means a package containing either 20 or 25 cigarettes.

~~"Retail dealer" includes every person other than a wholesale dealer, as defined in this section, who sells or offers for sale any cigarettes and who is properly registered as a retail trade with the Commonwealth in accordance with the Virginia Department of Taxation Business Registration Application (Form R-1).~~

"Retail sale" or "sale at retail" includes all sales except sales by wholesale dealers to ~~retail dealers~~ *tobacco retailers* or *to* other wholesale dealers for resale.

"Stamping agent" has the same meaning as provided in § 3.2-4204. ~~For the purposes of provisions relating to "roll-your-own" tobacco, "stamping agent" includes "distributor" as that term is defined in § 58.1-1021.01.~~

"Stamps" means the stamp or stamps by the use of which the tax levied under this chapter is paid and shall be officially designated as Virginia revenue stamps. The Department is hereby authorized to provide for the use of any type of stamp that will effectuate the purposes of this chapter, including but not limited to decalcomania and metering devices.

"Storage" means any keeping or retention in the Commonwealth of ~~cigarettes~~ *tobacco products* for any purpose except sale in the regular course of business or subsequent use solely outside the Commonwealth.

"Tax-paid cigarettes" means cigarettes that (i) bear valid Virginia stamps to evidence payment of excise taxes or (ii) were purchased outside of the Commonwealth and either (a) bear a valid tax stamp for the state in which the cigarettes were purchased or (b) when no tax stamp is required by the state, proper evidence can be provided to establish that applicable excise taxes have been paid.

"Tobacco product" means (i) any product containing, made of, or derived from tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by any other means, including a cigarette unless otherwise stated, and including a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (ii) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and (iii) any component, part, or accessory of a product described in clause (i) or (ii), whether or not such component, part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, and pipes. "Tobacco product" does not include drugs or devices, as such terms are defined in 21 U.S.C. § 321, or combination products, as

such term is used in 21 U.S.C. § 353, if such drugs, devices, or combination products are authorized for sale by the U.S. Food and Drug Administration.

"Tobacco retailer" means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation that owns, operates, or manages any tobacco retail establishment. "Tobacco retailer" does not include nonmanagement employees of a tobacco retail establishment.

"Tobacco retail establishment" means any place of business where tobacco products are available for sale to the general public, including any grocery store, tobacco product shop, kiosk, convenience store, gasoline service station, bar, or restaurant where tobacco products are available for sale to the general public.

"Use" means the exercise of any right or power over ~~cigarettes~~ *tobacco products* incident to the ownership thereof or by any transaction where possession is given, except that it does not include the sale of ~~cigarettes~~ *tobacco products* in the regular course of business.

"Wholesale dealer" includes persons who are properly registered as tobacco product merchant wholesalers with the Commonwealth in accordance with the Virginia Department of Taxation Business Registration Application (Form R-1) and who (i) sell ~~cigarettes~~ *tobacco products* at wholesale only to ~~retail dealers~~ *tobacco retailers* for the purpose of resale only or (ii) sell at wholesale to institutional, commercial, or industrial users. "Wholesale dealer" also includes chain store distribution centers or houses that distribute ~~cigarettes~~ *tobacco products* to their stores for sale at retail.

§ 58.1-1001. Taxes levied; rate.

A. Except as provided in subsection B, in addition to all other taxes now imposed by law, every person within ~~this~~ *the* Commonwealth who sells, stores, or receives cigarettes made of tobacco or any substitute thereof, for the purpose of distribution to any person within ~~this~~ *the* Commonwealth, shall pay to ~~this~~ *the* 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~~ *nine cents ($0.09) on each such cigarette sold*.

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% of the manufacturer's sales price of such roll-your-own tobacco~~ *there is hereby imposed a tax upon the privilege of selling or dealing in tobacco products, except cigarettes, in the Commonwealth by any person engaged in business as a distributor thereof, at the rate of 39 percent of the manufacturer's sales price of such tobacco products*.

C. *1.* The revenues generated by the taxes imposed under ~~this section on and after August 1, 2004,~~ *subsection A* shall be collected by the Department and ~~deposited into~~ *allocated as follows:*

a. 16.67 percent to the Virginia Health Care Fund established under § 32.1-366*;*

b. 3.32 percent to the Department of Health for its costs related to Quit Now Virginia or any successor program with the purpose of providing free information and coaching to residents who want to quit smoking or using tobacco;

c. 3.32 percent to the Virginia Foundation for Healthy Youth to fund initiatives to prevent or reduce youth tobacco use;

d. 0.82 percent to the Department of Behavioral Health and Developmental Services to fund initiatives to educate merchants on the laws governing the sale of tobacco products; and

e. The remainder to the general fund.

2. The revenues generated by the taxes imposed under subsection B shall be collected by the Department and allocated as follows:

a. 25.64 percent to the Virginia Health Care Fund established under § 32.1-366;

b. 2.97 percent to the Department of Health for its costs related to Quit Now Virginia or any successor program with the purpose of providing free information and coaching to residents who want to quit smoking or using tobacco;

c. 2.97 percent to the Virginia Foundation for Healthy Youth to fund initiatives to prevent or reduce youth tobacco use;

d. 0.74 percent to the Department of Behavioral Health and Developmental Services to fund initiatives to educate merchants on the laws governing the sale of tobacco products; and

e. The remainder to the general fund.

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.

E. In no case shall a product be subject to tax under both subsection A and subsection B; in the

event of ambiguity as to which tax applies, the Department shall apply the tax levied under subsection B.

§ 58.1-1003. How cigarette taxes paid; affixing of stamps; records of stamping agents; civil penalties.

A. ~~Except as otherwise specifically provided pursuant to § 58.1-1003.2, the~~ *The* taxes imposed by ~~this chapter~~ *subsection A of § 58.1-1001* shall be paid by affixing stamps equaling the amount of the tax in the manner set forth. The stamps shall be affixed to each individual package, bag, box or can in such a manner that their removal will require continued application of water or steam. Every stamping agent in the Commonwealth shall affix to any unstamped cigarettes the requisite denominations and amount of stamp or stamps that represent the proper tax levied by this chapter prior to shipping to other wholesale dealers or retail outlets.

B. Every wholesale dealer shall at the time of shipping or delivering any cigarettes make and retain a true duplicate invoice of the same which shall show full and complete details of the sale or delivery of the taxable article. All stamping agents shall also keep a record of purchases of all cigarettes, and retain all books, records, and memoranda pertaining to the purchase and sale of such cigarettes for a period of five years, and such records shall be subject to examination by the Department upon request.

C. Every stamping agent shall be required to file a report between the first and twentieth of each month, covering all revenue stamps the stamping agent affixed to cigarettes during the preceding month. The report shall (i) list all brands of cigarettes to which the Virginia revenue stamp was affixed and the quantity, measured in packs, of all such brands to which the Virginia revenue stamp was affixed; (ii) list the name and address of both the manufacturer of the cigarettes and the entity from which the cigarettes were obtained; and (iii) include the required documentation for and detail the amount and source of any bad debt deductions being taken pursuant to § 58.1-1003.1. The Department may allow such reports to be filed electronically.

D. ~~1. For the purpose of compensating stamping agents for accounting for the tax imposed under this article on roll-your-own tobacco, such stamping agents shall be allowed when filing a monthly return and paying the tax to deduct 2 percent of the tax otherwise due if the amount due was not delinquent at the time of payment.~~

~~2. The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all discounts allowed to stamping agents pursuant to this subsection and such amount shall be taken into consideration in preparing the official estimate of the total revenues to be collected during the fiscal year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available for programs financed by the Virginia Health Care Fund as a result of such discounts shall be made up by the general fund.~~

~~E.~~ Any stamping agent who fails or refuses to comply with any of the above provisions shall have such agent's permit to affix revenue stamps revoked by the Commissioner. Additionally, a stamping agent may be subject to a civil penalty of $500 for each day after the due date that an agent fails or refuses to file a report required under subsection C. The penalty shall be assessed and collected by the Department as other taxes are collected.

§ 58.1-1003.1. Bad debt; deduction; definition.

A. Any stamping agent may deduct the amount of bad debts from the tax imposed by ~~this chapter~~ *subsection A of § 58.1-1001*. The amount deducted shall be charged off as uncollectible on the books of the stamping agent. If a person pays all or part of a bad debt that a stamping agent claimed as a deduction under this section, the stamping agent shall be liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received and shall remit these taxes together with its next report to the Department pursuant to subsection C of § 58.1-1003.

B. Any claim for a bad debt deduction under this section shall be supported by all of the following:

1. A copy of the original invoice;

2. Evidence that the cigarettes described in the invoice were delivered to the person who ordered them; and

3. Evidence that the person who ordered and received the cigarettes did not pay the stamping agent for the cigarettes and that the stamping agent used reasonable collection practices in attempting to collect the debt.

C. As used in this section, "bad debt" means the taxes under this chapter attributable to any portion of a debt that is related to a sale of cigarettes subject to tax under this chapter that is not otherwise deductible or excludable, that has become worthless or uncollectible in the time period between the date when taxes accrue to the Department for the stamping agents' preceding tax return and the date when taxes accrue to the Department for the present return, and that is eligible to be claimed, or could be eligible to be claimed if the stamping agent kept accounts on an accrual basis, as a deduction pursuant to § 166 of the Internal Revenue Code. A bad debt shall not include (i) any interest on the wholesale price of cigarettes, (ii) uncollectible amounts on property that remains in the possession of the stamping agent until the full purchase price is paid, (iii) expenses incurred in attempting to collect any account

receivable or any portion of the debt recovered, (iv) any accounts receivable that have been sold to a third party for collection, and (v) repossessed property.

§ 58.1-1008.2. Materially false statements in reports.

Any tobacco product manufacturer, stamping agent, or importer of cigarettes, or any officer, employee, or agent of any such entity, who knowingly and with the intent to defraud, mislead, or deceive makes any materially false statement in any record required by ~~this article or Article 2.1 (§ 58.1-1021.01 et seq.) of~~ this chapter to be kept, or in any report or return required by ~~this article or Article 2.1 of~~ this chapter to be filed with the Department is guilty of a violation of § 18.2-498.3. Each record kept and each report or return filed containing one or more false statements shall constitute a separate offense.

§ 58.1-1009. Preparation, design, and sale of stamps; unlawful sale or purchase of stamps a felony; penalty.

A. The Department is hereby authorized and directed to have prepared and to sell stamps suitable for denoting the tax on all cigarettes. The Department shall design, adopt and promulgate the form and kind of stamps to be used and may allow for electronic purchase and payment when selling such stamps. Stamps so adopted and promulgated shall be known as and termed "Virginia revenue stamps," and in any information or indictment, it shall be sufficient to describe the stamps as "Virginia revenue stamps."

Any person other than the Department who sells such revenue stamps, not affixed to cigarettes sold and delivered by them, whether the said stamps be genuine or counterfeit, shall be guilty of a Class 6 felony. Any person who purchases revenue stamps from anyone other than the Department, unless such stamps are already affixed to cigarettes being purchased by and delivered to him, or who uses or affixes, or causes to be used or affixed, any revenue stamps not purchased from the Department by the owner of the cigarettes being handled or stamped, whether such stamps are genuine or counterfeit, shall be guilty of a Class 6 felony. When stamping agents have qualified as such with the Department, as provided in § 58.1-1011, and purchase stamps as prescribed herein for use on taxable cigarettes sold and delivered by them, the Department shall allow to each stamping agent on such sales of revenue stamps a discount equal to two percent of the total charged to the stamping agent by the Department for the purchase of the revenue stamps. The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all discounts allowed to stamping agents pursuant to this subsection and such amount shall be taken into consideration in preparing the official estimate of the total revenues to be collected during the fiscal year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available for programs financed by the Virginia Health Care Fund as a result of such discounts shall be made up by the general fund.

All stamps prescribed by the Department shall be designed and furnished in such a fashion as to permit identification of the wholesale dealer or ~~retail dealer~~ *tobacco retailer* that affixed the stamp to the particular package of cigarettes, by means of a serial number or other mark on the stamp. The Department shall maintain for not less than three years information identifying which wholesale dealer or ~~retail dealer~~ *tobacco retailer* affixed the revenue stamp to each package of cigarettes.

B. 1. The Department shall provide Virginia revenue stamps to certain wholesale dealers holding a current permit issued pursuant to § 58.1-1011 prior to collecting the tax imposed under this chapter from such wholesale dealer. Such wholesale dealers shall be allowed to obtain the stamps from the Department without concurrent payment of the tax only if the conditions of this subsection are satisfied.

In order to obtain Virginia revenue stamps without concurrent payment of the tax imposed under this chapter, a wholesale dealer shall (i) file a bond with a corporate surety licensed to do business in Virginia, or (ii) file an irrevocable letter of credit satisfactory to the Tax Commissioner as to the bank or savings institution, the form and substance, and payable to the Commonwealth in a face amount determined by the Tax Commissioner to be satisfactory to cover possible losses resulting from the failure to remit taxes due but not exceeding two times the anticipated average monthly amount in purchases of Virginia revenue stamps by the wholesale dealer as determined by the Commissioner. The letter of credit shall be from a bank incorporated or authorized to conduct banking business under the laws of the Commonwealth or authorized to do business in the Commonwealth under the banking laws of the United States, or a federally insured savings institution located in the Commonwealth. Such bond or irrevocable letter of credit shall be conditioned upon payment of the tax imposed by this chapter relating to Virginia revenue stamps obtained by the wholesale dealer from the Department (without concurrent payment of the tax) for which such tax, net of any applicable discount described in subsection A, shall be paid within the 30 days immediately following the date that the related revenue stamp or stamps were provided by the Department to such wholesale dealer. Any such bond shall be so written that, on timely payment of the premium thereon, it shall continue in force from year to year unless sooner terminated.

2. Any surety on a bond filed by any wholesale dealer shall be released and discharged from any and all liability to the Commonwealth accruing on such bond after the expiration of 60 days from the date

upon which such surety shall have lodged with the Commissioner written request to be released and discharged. But such request shall not operate to relieve, release or discharge such surety from any liability already accrued or which shall accrue before the expiration of such 60-day period. The Commissioner shall, promptly on receipt of such notice, notify the wholesale dealer who furnished such bond. Unless such dealer on or before the expiration of such 60 days' notice files with the Commissioner a new bond or letter of credit that meets all the conditions described in subdivision 1, the Commissioner shall forthwith require the wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining revenue stamps from the Department.

In the event that liability upon the bond or letter of credit filed by the wholesale dealer with the Commissioner shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the Commissioner any surety on the bond becomes unsatisfactory or unacceptable, then the Commissioner may require the filing of a new bond or letter of credit. Unless such new bond or letter of credit meets all the conditions described in subdivision 1, the Commissioner shall forthwith require the wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining revenue stamps from the Department.

3. Notwithstanding any other provision in this subsection, the Tax Commissioner, for good cause, shall require a wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining revenue stamps from the Department, regardless of whether or not such dealer has filed or agreed to file the bond or letter of credit described in this subsection.

C. In addition to any other penalties provided by law, the Department may revoke the permit issued, in accordance with § 58.1-1011, to any person who violates any provision of this section.

§ 58.1-1011. Qualification for permit to affix Virginia revenue stamps; penalty.

A. Only manufacturers, wholesale dealers, and ~~retail dealers~~ *tobacco retailers* may be permitted as stamping agents. It shall be unlawful for any person to purchase, possess, or affix Virginia revenue stamps without first obtaining a permit to do so from the Department. Every manufacturer, wholesale dealer, or ~~retail dealer~~ *tobacco retailer* who desires to qualify as a stamping agent with the Department shall make application to the Department on forms prescribed for this purpose, which shall be supplied upon request. The application forms will require such information relative to the nature of business engaged in by the applicant as the Department deems necessary to the qualifying of the applicant as a stamping agent. The Department shall conduct a background investigation, to include a Virginia Criminal History Records search, and fingerprints of the applicant, or its responsible principals, managers, and other persons engaged in handling and stamping cigarettes at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the Department determines a National Criminal Records search is necessary, on applicants for licensure as cigarette tax stamping agents. The Department may refuse to issue a stamping permit or may suspend, revoke or refuse to renew a stamping permit issued to any person, partnership, corporation, limited liability company or business trust, if it determines that any principal, manager, or other persons engaged in handling and stamping cigarettes 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 a 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 stamping permit to the Department is 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 stamping agent applications, conducting background investigations and issuing stamping permits. Any application or renewal fees 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. If the Department after review of his application believes the manufacturer, wholesale dealer or ~~retail dealer~~ *tobacco retailer* is qualified, the Department shall issue to the applicant a permit qualifying him as a stamping agent, as defined in this chapter, and he shall be allowed the discount on purchases of Virginia revenue stamps as set out herein for stamping agents purchasing stamps for their individual use. Such stamping agent shall be authorized to affix Virginia revenue stamps, and in addition, if the applicant qualifies as a wholesale dealer, that shall be so noted on the permit issued by the Department. Permits issued pursuant to this section shall be valid for a period of three years from the date of issue unless revoked by the Department in the manner provided herein. The Department shall not sell Virginia revenue stamps to any person or entity unless and until the Department has issued that person or entity a permit to affix Virginia revenue stamps. The Department may promulgate regulations governing the issuance, suspension and revocation of stamping agent permits. The Department may at any time revoke the permit issued to any stamping agent as herein provided who is not in compliance with any of the provisions of this chapter or any of the rules of the Department adopted and promulgated under authority of this chapter.

B. The Department shall compile and maintain a list of licensed cigarette stamping agents. The list shall be updated monthly and shall be available upon request to any federal, state, or local law-enforcement agency.

§ 58.1-1012. Duties of wholesale dealer, manufacturer, and exclusive cigarette distributor on shipping, delivering, or sending out cigarettes.

A. Every wholesale dealer in the Commonwealth shall, before shipping, delivering or sending out any cigarettes to any dealer in the Commonwealth or for sale in the Commonwealth, cause the same to have the requisite denominations and amount of stamps to represent the tax affixed as stated herein, and every other wholesale dealer shall at the time of shipping or delivering any cigarettes make a true duplicate invoice of the same, showing the date, amount and value of each class of articles shipped or delivered, and retain a duplicate thereof. Wholesale dealers in the Commonwealth who ship, deliver, or send any cigarettes to the United States government for sale or distribution to any military, naval or marine reservation owned by the United States government within the Commonwealth shall be required to carry out the provisions set out in this chapter for such sales or deliveries.

B. Any manufacturer or exclusive *cigarette* distributor shall not be required to affix Virginia revenue stamps as required by subsection A, if such manufacturer or exclusive *cigarette* distributor is shipping, sending, selling, or delivering the cigarettes to a wholesale dealer in the Commonwealth who is a duly qualified wholesale dealer stamping agent in accordance with § 58.1-1011 or to a law-enforcement agency for use in the performance of its duties. The manufacturer or exclusive *cigarette* distributor who qualifies under this section and ships, sends, sells, or delivers cigarettes to a wholesale dealer shall keep on file a record of each such shipment, sale, or delivery and shall maintain such record for a period of three years.

§ 58.1-1016. Administration and enforcement of taxes.

The Department shall administer and enforce the ~~tax~~ *taxes* imposed by this ~~article~~ *chapter*. It shall have the power to enter upon the premises of any person and to examine, or cause to be examined, by any agent or representative designated by it for that purpose, any books, papers, records, invoices, or memoranda, etc., bearing upon the amount of taxes payable, and to secure other information directly or indirectly concerned in the enforcement of this chapter.

§ 58.1-1017. Sale, purchase, possession, etc., of cigarettes for purpose of evading tax; penalties.

A. Any person, except as otherwise provided by law, who sells, purchases, transports, receives, or possesses unstamped cigarettes shall be required to pay any tax owed pursuant to this chapter. In addition, such person shall be required to pay a civil penalty of (i) $2.50 per pack, up to $500, for the first violation by a legal entity within a 36-month period; (ii) $5 per pack, up to $1,000, for the second violation by the legal entity within a 36-month period; and (iii) $10 per pack, up to $50,000, for the third and any subsequent violation by the legal entity within a 36-month period, to be assessed and collected by the Department as other taxes are collected. In addition, where willful intent exists to defraud the Commonwealth of the tax levied under this chapter, such person shall be required to pay a civil penalty of $25 per pack, up to $250,000.

B. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase, transport, receive or possess less than 500 packages of cigarettes unless the same have been stamped in the manner required by law, for the purpose of evading the payment of the taxes on such products. Any person violating the provisions of this subsection is guilty of a Class 1 misdemeanor. Any person who is convicted of a second or subsequent violation of this subsection is guilty of a Class 6 felony, provided that the accused was at liberty as defined in § 53.1-151 between each conviction and it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this subsection.

C. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase, transport, receive or possess 500 or more packages of cigarettes unless the same have been stamped in the manner required by law, for the purpose of evading the payment of the taxes on such products. Any person violating the provisions of this subsection shall be guilty of a Class 6 felony. Any person who is convicted of a second or subsequent violation of this subsection is guilty of a Class 5 felony, provided that the accused was at liberty as defined in § 53.1-151 between each conviction and it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this subsection.

D. If a person who (i) has not been issued a permit to affix revenue stamps by the Department, as provided in § 58.1-1011, or (ii) is not a ~~retail dealer~~ *tobacco retailer* who has lawfully purchased cigarettes from such permit holder has in his possession within the Commonwealth more than 30 packages of unstamped cigarettes, such possession shall be presumed to be for the purpose of evading the payment of the taxes due thereon. No civil penalty shall be imposed under this section for any unstamped cigarettes if a civil penalty under § 58.1-1013 has been paid for such unstamped cigarettes.

§ 58.1-1017.5. How taxes paid on tobacco products other than cigarettes.

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A. For purposes of this section, "tobacco product" does not include a cigarette.

B. The taxes imposed by subsection B of § 58.1-1001 shall be imposed at the time a 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 tobacco retailers in the Commonwealth. It is the intent and purpose of this section that the distributor that 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 section to impose the tax once, and only once, on all tobacco products for sale in the Commonwealth.

C. 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.

§ 58.1-1017.6. Reports by manufacturers of tobacco products other than cigarettes.

A. For purposes of this section, "tobacco product" does not include a cigarette.

B. Each manufacturer that ships tobacco products to any person located in the Commonwealth shall file a report with the Department no later than the twentieth of each month identifying all such shipments made by the manufacturer during the preceding month. The Department may allow such reports to be filed electronically. Such reports shall identify the names and addresses of the persons within the Commonwealth to which the shipments were made and the quantities of tobacco products shipped, by type of product and brand. The Tax Commissioner may authorize any manufacturer to file such reports for a period less frequently than monthly when, in the opinion of the Tax Commissioner, doing so would improve the efficiency of the administration of the tax imposed by subsection B of § 58.1-1001. If a manufacturer is allowed to file other than on a monthly basis, each such report shall be due no later than the twentieth day of the month that immediately follows the close of the reporting period. Each such report shall contain the same information as required herein for monthly reporting.

§ 58.1-1017.7. Monthly return and payments of tax.

A. For purposes of this section, "tobacco product" does not include a cigarette.

B. Every distributor subject to the tax imposed under subsection B of § 58.1-1001 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 during the preceding month for which tax is imposed pursuant to subsection B of § 58.1-1001 during the preceding month. Each return shall show the quantity and manufacturer's 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 in the Commonwealth during the preceding calendar month. Every licensed distributor outside the Commonwealth shall in a like manner file a return showing the quantity and manufacturer's sales price of each tobacco product shipped or transported to retailers in the Commonwealth to be sold by those retailers, during the preceding calendar month. The return shall be made on forms furnished or prescribed by the Department and shall contain or be accompanied by such further information as the Department shall require. The distributor, at the time of filing the return, shall pay to the Department the tax imposed under subsection B of § 58.1-1001 for each such package of tobacco product purchased in the preceding month on which tax is due.

C. For the purpose of compensating dealers for accounting for the tax imposed under subsection B of § 58.1-1001, a tobacco retailer or wholesale dealer shall be allowed when filing a monthly return and paying the tax to deduct two percent of the tax otherwise due if the amount due was not delinquent at the time of payment.

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

§ 58.1-1017.8. Failure to file return; fraudulent return; penalties; interest; overpayment of tax.

A. For purposes of this section, "tobacco product" does not include a cigarette.

B. When any distributor fails to make any return or pay the full amount of the tax required by subsection B of § 58.1-1001, there shall be imposed a specific penalty to be added to the tax in the amount of five percent if the failure is for not more than one month, with an additional two percent for each additional month, or fraction thereof, during which the failure continues, not to exceed 20 percent in the aggregate. In no case, however, shall the penalty be less than $10, and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under subsection B of § 58.1-1001, or in the case of a willful failure to file a return with the intent to defraud

the Commonwealth of any such tax, a specific penalty of 50 percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this section shall be payable by the distributor and collectible by the Department in the same manner as if they were a part of the tax imposed.

C. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under subsection B of § 58.1-1001 when any distributor reports his purchases at 50 percent or less of the actual amount.

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

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

E. If the Tax Commissioner determines that the amount paid the Commonwealth under § 58.1-1017.7 in regard to any monthly return was greater than the amount of tax due the Commonwealth, the excess may be taken as a credit by the distributor against a subsequent month's tax imposed under subsection B of § 58.1-1001. However, if such distributor requests a refund, such excess shall be refunded to the distributor within 45 days of the request. The refund shall include interest at the rate provided in § 58.1-15. Interest on such refunds shall accrue from the due date of the return to which such excess is attributable or the date such excess was paid to the Department, whichever is later, and shall end on a date determined by the Department preceding the date of the refund check by not more than seven days.

§ 58.1-1017.9. Distributor's license; penalty.

A. For purposes of this section, "tobacco product" does not include a cigarette.

B. No person shall engage in the business of selling or dealing in tobacco products as a distributor in the Commonwealth without first having received a separate license from the Department for each location or place of business. Each application for a distributor's license shall be accompanied by a fee to be prescribed by the Department. Every application for such license shall be made on a form prescribed by the Department and the following information shall be provided on the application:

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

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

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

4. Such other information as the Department may require for the purpose of the administration of this chapter.

C. A person outside the Commonwealth that ships or transports tobacco products to tobacco retailers in the Commonwealth, to be sold by those tobacco retailers, may make application for license as a distributor, be granted such a license by the Department, and thereafter be subject to all the provisions of this section. Once a license is granted pursuant to this section, such person shall be entitled to act as a licensed distributor 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 chapter.

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 distributors. The Department may refuse to issue a distributor's license or may suspend, revoke, or refuse to renew a distributor's license issued to any person, partnership, corporation, limited liability company, or business trust, if it determines that the principals, managers, or other persons engaged in handling tobacco products at the licensable location of the applicant have 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 a 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 distributor's license to the Department is 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 distributor's license applications, conducting background investigations, and issuing distributor'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.

D. Upon receipt of an application in proper form and payment of the required license fee, the Department shall, unless otherwise provided by this section, issue to the applicant a license, which shall permit the licensee to engage in business as a distributor at the place of business shown on the license. Each license, or a copy thereof, shall be prominently displayed on the premises covered by the license. No license shall be transferable to any other person. Distributor's licenses issued pursuant to this section shall be valid for a period of three 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 distributor who is found guilty of violating or noncompliance with any of the provisions of this chapter or any of the rules of the Department adopted and promulgated under authority of this chapter.

E. The Department shall compile and maintain a current list of licensed distributors. The list shall be updated on a monthly basis and published on the Department's official website, available to any interested party.

§ 58.1-1017.10. Certain records required of distributor; access to premises.

A. For purposes of this section, "tobacco product" does not include a cigarette.

B. Each distributor 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, purchased, manufactured, brought in or caused to be brought in from outside the Commonwealth, or shipped or transported to retailers in the Commonwealth; (ii) all sales of tobacco products made; (iii) all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor; and (iv) any records required by the Department.

All books, records, and other papers and documents required by this subsection to be kept 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, their destruction or disposal at an earlier date.

C. At any time during usual business hours, duly authorized agents or employees of the Department may enter any place of business of a distributor 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 chapter 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 license.

D. Each person that 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.

E. Each distributor shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The distributor shall preserve a legible copy of each invoice for three years after the date of purchase. Invoices shall be available for inspection by authorized agents or employees of the Department at the distributor's place of business.

F. Any violation of this chapter shall be grounds for revocation of the license.

§ 58.1-1017.11. Unlawful importation, transportation, or possession of tobacco products other than cigarettes; civil penalty.

A. For purposes of this section, "tobacco product" does not include a cigarette.

B. It shall be unlawful for any person that is not a licensed distributor in the Commonwealth pursuant to this chapter to import, transport, or possess, for resale, any tobacco products in the Commonwealth, or under circumstances and conditions that indicate that tobacco products are being imported, transported, or possessed in a manner as to knowingly and intentionally evade or attempt to evade any tax imposed by this chapter. Such tobacco products shall be subject to seizure, forfeiture, and destruction by any law-enforcement officer of the Commonwealth. All fixtures, equipment, materials, and personal property used in substantial connection with the sale or possession of tobacco products involved in a knowing and intentional violation of this chapter shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, applied mutatis mutandis.

C. Any person, except as otherwise provided by law, that imports, transports, or possesses for resale tobacco products upon which the tax imposed by subsection B of § 58.1-1001 has not been paid shall be required to pay any tax owed pursuant to subsection B of § 58.1-1001. In addition, if such person imports, transports, or possesses such tobacco products in such a manner as to knowingly and intentionally evade or attempt to evade any tax imposed by subsection B of § 58.1-1001, he shall be required to pay a civil penalty of (i) $2.50 per tobacco product, up to $500, for the first violation by the person within a 36-month period; (ii) $5 per tobacco product, up to $1,000, for the second violation by the person within a 36-month period; and (iii) $10 per tobacco product, up to $50,000, for the third or subsequent violation by the person within a 36-month period, to be assessed and collected by the

Department as other taxes are collected. In addition, where willful intent exists to defraud the Commonwealth of the tax levied under subsection B of § 58.1-1001, such person shall be required to pay a civil penalty of $25 per tobacco product, up to $250,000.

§ 58.1-1017.12. Purchase of tobacco products other than cigarettes for resale.

A. For purposes of this section, "tobacco product" does not include a cigarette.

B. No tobacco retailer shall purchase tobacco products, for resale to consumers, from any person within or outside the Commonwealth, except as follows:

1. A tobacco retailer purchases from a distributor licensed by the Commonwealth.

2. A tobacco retailer applies for and is granted a license as a distributor, and files returns and maintains records as required of licensed distributors under this chapter.

§ 58.1-1018. Tax imposed on storage, use, or consumption of tobacco products; 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~~ *the* Commonwealth of ~~cigarettes~~ *tobacco products* purchased at retail ~~in an amount equal to that~~ *according to the applicable rate* set out in § 58.1-1001. Every person storing, using, or otherwise consuming in ~~this~~ *the* Commonwealth ~~cigarettes~~ *tobacco products* 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~~ *the* Commonwealth; however, if such *tobacco products are* cigarettes *and* have attached thereto the requisite stamps or if the excise tax imposed by Article 1 (§ 58.1-1000 et seq.) has been paid by the seller of such ~~cigarettes~~ *tobacco products*, then the tax imposed by this article shall not be due.

The revenues generated by the tax imposed under this section ~~on and after August 1, 2004, shall be collected by the Department and deposited into the Virginia Health Care Fund established under § 32.1-366~~ *shall be collected and allocated according to the provisions of subsection C of § 58.1-1001*.

§ 58.1-1019. Monthly returns and payment of tax.

Every person owning or having in his possession or custody ~~cigarettes~~ *tobacco products*, the storage, use, or other consumption of which is subject to the tax imposed by this article, shall, on or before the tenth day of the month following, file with the Department a return for the preceding month in such form as may be prescribed by the Department showing the ~~cigarettes~~ *tobacco products* purchased by such person, and such other information as the Department may deem necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of tax herein imposed.

§ 58.1-1021. Documents touching purchase, sale, etc., of tobacco products to be kept for three years, subject to inspection; penalty.

It shall be the duty of every person storing, using, or otherwise consuming in ~~this~~ *the* Commonwealth ~~cigarettes~~ *tobacco products* subject to the provisions of this article to keep and preserve all invoices, books, papers, ~~cancelled~~ *canceled* checks, or other memoranda touching the purchase, sale, exchange, receipt, ownership, storage, use, or other consumption of such ~~cigarettes~~ *tobacco products* for a period of three years. All such invoices, books, papers, ~~cancelled~~ *canceled* checks, or other memoranda shall be subject to audit and inspection by any duly authorized representative of the Department at any reasonable time. Any person who fails or refuses to keep and preserve the records as herein required shall be guilty of a Class 2 misdemeanor. Any person who fails or refuses to allow an audit or inspection of the records as herein provided~~,~~ shall be assessed a penalty of $1,000 for each day he fails or refuses to allow an audit or inspection of the records, to be assessed and collected by the Department as other taxes are collected. Article 7. ~~Cigarette Tax~~*Tobacco Products Taxes*.

§ 58.1-3830. Local tobacco products taxes.

A. ~~No provision of Chapter 10 (§ 58.1-1000 et seq.) of this title shall be construed to deprive counties, cities and towns of the right to levy taxes upon the sale or use of cigarettes, provided such county, city or town had such power prior to January 1, 1977~~ *As used in this article, unless the context requires a different meaning:*

"Cigarette" means the same as such term is defined in § 58.1-1001.

"Department" means the Department of Taxation.

"Manufacturer" means the same as such term is defined in § 58.1-1001.

"Pack" means the same as such term is defined in § 58.1-1001.

"Stamps" means the same as such term is defined in § 58.1-1001.

"Tobacco products" means the same as such term is defined in § 58.1-1001.

B. Any locality may by ordinance levy taxes upon the sale and use of tobacco products, without limitation on the rate of such taxes.

C. The governing body of any ~~county, city or town which~~ *locality that* levies ~~a cigarette tax and permits the use of meter impressions or stamps to evidence its payment~~ *tobacco products taxes* may authorize an officer of the ~~county, city or town~~ *locality* or *a* joint enforcement authority to enter into an arrangement with the Department ~~of Taxation~~ under which *the Department collects tobacco products*

taxes due to such locality or authority. The arrangement may provide that a tobacco wholesaler who so desires may use a dual die or stamp to evidence the payment of both the ~~county, city, or town~~ *local* tax *on cigarettes*~~,~~ and the state tax *on cigarettes*~~, and the~~. *The* Department is hereby authorized to enter into such an arrangement. The procedure under such an arrangement shall be such as may be agreed upon by and between the authorized ~~county, city, town~~ *locality* or joint enforcement authority officer and the Department.

~~B. Any county cigarette tax imposed shall not apply within the limits of any town located in such county where such town now, or hereafter, imposes a town cigarette tax~~*D. If a county imposes a tobacco products tax, such tax shall not apply within the limits of any town located in such county that also imposes a tobacco products tax*. However, if the governing body of any such town shall provide that a county ~~cigarette~~ *tobacco products* tax, as well as the town ~~cigarette~~ *tobacco products* tax, shall apply within the limits of such town, then such ~~cigarette~~ *tobacco products* tax may be imposed by the county within such town.

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

Any ~~county, city or town~~ *locality* having ~~a tax~~ *taxes* upon the sale or use of ~~cigarettes~~ *tobacco products* may by ordinance~~,~~ provide for the administration and enforcement of any such ~~cigarette tax~~ *taxes*. Such local ordinance may:

1. Provide for the registration of any distributor, wholesaler, vendor, retailer or other person selling, storing, or possessing ~~cigarettes~~ *tobacco products* 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~~ *locality* 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~~*tobacco products*, 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~~ *any* tax *on cigarettes* or other method or system of reporting payment and collection of such tax. Any local tax stamp or meter impression required to be used to evidence payment of ~~the~~ *such* tax shall be of the same stamp technology that is used or required by the Commonwealth for the state ~~cigarette~~ tax ~~stamp~~ pursuant to ~~Chapter 10 (§ 58.1-1000 et seq.)~~ *subsection A of § 58.1-1001*. The purchase price of any tax stamps purchased under this section shall be refunded, without penalties or additional fees, upon verification by the ~~county, city, or town~~ *locality* imposing the tax that the stamps have been returned to such ~~county, city, or town~~ *locality*.

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~~ *tobacco products* 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~~ *tobacco retailer* license and, where applicable, both a business license and ~~retail cigarette~~ *tobacco retailer* 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~~ *tobacco products* in the possession of distributors or public warehouses ~~which~~ *that* 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~~ *tobacco products* and other property, other than motor vehicles, used in the furtherance of any illegal evasion of the tax so seized and confiscated 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, penalties for fraud or evasion of the tax not to exceed 50 percent, and interest not to exceed three quarters of one percent per month, upon any tax found to be overdue and unpaid. The mere possession of untaxed cigarettes in quantities of not more than six cartons shall not be a violation of any such ordinance.

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

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

8. Provide that any counterfeit stamps or counterfeit impression devices may also be seized and confiscated.

9. Any county, city or town may enact an ordinance which would delegate its administrative and enforcement authority under its ~~cigarette~~ *tobacco products* tax ordinance to one agency or authority pursuant to the provisions of § 15.2-1300. Such agency or authority may promulgate rules and regulations governing the display of cigarette stamps in vending machines, tax liens against property of taxpayers hereunder, extend varying discount rates and establish different classes of taxpayers or those required to collect and remit the tax, requirements concerning keeping and production of records, administrative and jeopardy assessment of tax where reasonably justified, required notice to authorities of sale of taxpayer's business, audit requirements and authority, and criteria for authority of distributors and others to possess untaxed ~~cigarettes~~ *tobacco products* and any other provisions consistent with the powers granted by this section or necessarily implied therefrom. Such ordinance may further provide that such agency or authority created may issue a common revenue stamp, employ legal counsel, bring appropriate court action, in its own name where necessary to enforce payment of the cigarette taxes or penalties owed any member jurisdiction and provide ~~cigarette~~ *tobacco products* tax agents, and the necessary enforcement supplies and equipment needed to effectively enforce the ~~cigarette~~ *tobacco products* tax ordinance promulgated by each such ~~county, city or town~~ *locality*. Any ~~cigarette~~ *tobacco products* tax agents shall meet such requirements of training or experience as may be promulgated from time to time by the enforcement authority when performing their duties and shall be required to carry proper identification and may be armed for their own protection and for the enforcement of such ordinance. Any such agent shall have the power of arrest upon reasonable and probable cause that a violation of any tobacco tax ordinance has been committed. Any common revenue stamp issued by such agency or authority shall be of the same stamp technology that is used or required by the Commonwealth for the state ~~cigarette~~ tax ~~stamp~~ pursuant to ~~Chapter 10 (§ 58.1-1000 et seq.)~~ *subsection A of § 58.1-1001*.

§ 58.1-3840. Certain excise taxes permitted.

A. The provisions of Chapter 6 (§ 58.1-600 et seq.) to the contrary notwithstanding, any city or town having general taxing powers established by charter pursuant to or consistent with the provisions of § 15.2-1104 may impose excise taxes on ~~cigarettes~~ *tobacco products as provided in Article 7 (§ 58.1-3830 et seq.),* admissions, transient room rentals, meals, and travel campgrounds. No such taxes on meals may be imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price of the meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the sales price; or (iii) food and beverages sold through vending machines or on any tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children. No such taxes on meals may be imposed when sold or provided by (a)

restaurants, as such term is defined in § 35.1-1, to their employees as part of their compensation when no charge is made to the employee; (b) volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations, the first three times per calendar year and, beginning with the fourth time, on the first $100,000 of gross receipts per calendar year from sales of meals (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (c) churches that serve meals for their members as a regular part of their religious observances; (d) public or private elementary or secondary schools or institutions of higher education to their students or employees; (e) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (f) day care centers; (g) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (h) age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees.

Also, the tax shall not be levied on meals: (1) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; (2) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or (3) provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

In addition, as set forth in § 51.5-98, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes.

B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

C. Any city or town that is authorized to levy a tax on admissions may levy the tax on admissions paid for any event held at facilities that are not owned by the city or town at a lower rate than the rate levied on admissions paid for any event held at its ~~city~~ *city-owned* or town-owned civic centers, stadiums, and amphitheaters.

D. [Expired.]

§ 58.1-3907. Willful failure to collect and account for tax; penalty.

A. Any corporate or partnership officer as defined in § 58.1-3906, or any other person required to collect, account for and pay over any local admission, transient occupancy, food and beverage, daily rental property, or ~~cigarette~~ *tobacco products* taxes administered by the commissioner of the revenue or other authorized officer, who willfully fails to collect or truthfully account for and pay over such tax, and any such officer or person who willfully evades or attempts to evade any such tax or the payment thereof, shall, in addition to any other penalties provided by law, be guilty of a Class 1 misdemeanor.

B. Any person who willfully utilizes a device or software to falsify the electronic records of cash registers or other point-of-sale systems or otherwise manipulates transaction records that affect any local tax liability shall, in addition to any other penalties provided by law, be guilty of a Class 1 misdemeanor.

C. In addition to the criminal penalty provided in subsection B and any other civil or criminal penalty provided in this title, any person violating subsection B shall pay a civil penalty of $20,000, to be assessed by the commissioner of the revenue and collected by the treasurer as other local taxes are collected and deposited into the treasury of the political subdivision of the Commonwealth served by the treasurer.

D. Any criminal case brought pursuant to this section may be prosecuted by either the attorney for the Commonwealth or other attorney charged with the responsibility for prosecution of a violation of local ordinances.

2. That § 58.1-1003.2, Article 2.1 (§§ 58.1-1021.01 through 58.1-1021.05) of Chapter 10 of Title 58.1, and § 58.1-3831 of the Code of Virginia are repealed.

3. That the Department of Taxation shall develop guidelines and rules for transitional and permanent procedures implementing the provisions of this act. Such guidelines and rules shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).