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HOUSE BILL NO. 1764

Offered January 10, 2007

Prefiled December 27, 2006

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

Patron—Purkey

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1021.01 and 58.1-1021.02 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-1021.01. Definitions.

As used in this article, unless the context clearly shows otherwise, the term or phrase:

"Distributor" means (i) any person engaged in the business of selling tobacco products in the Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any tobacco products for sale; (ii) any person who makes, manufactures, fabricates, or stores tobacco products in the Commonwealth for sale in the Commonwealth; (iii) any person engaged in the business of selling tobacco products outside the Commonwealth who ships or transports tobacco products to any person in the business of selling tobacco products in the Commonwealth; or (iv) any retail dealer in possession of untaxed tobacco products in the Commonwealth.

"Manufacturer" means a person who manufactures or produces tobacco products and sells tobacco products to a distributor.

"Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the manufacturer's tobacco products.

"Manufacturer's sales price" means the actual price for which a manufacturer, manufacturer's representative, or any other person sells tobacco products to an unaffiliated distributor.

"Moist snuff" means any finely cut, ground, or powdered tobacco, other than dry snuff, that is intended to be placed in the mouth.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Retail dealer" means every person who sells or offers for sale any tobacco product to consumers.

"Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702 (a) of the Internal Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702 (m) of the Internal Revenue Code, and as such section may be amended; or (iii) "pipe tobacco" as defined in § 5702 (n) of the Internal Revenue Code, and as such section may be amended.

§ 58.1-1021.02. Tax on tobacco products.

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

1. *Upon each can or package of moist snuff, the rate of \$0.25 per ounce with a proportionate tax at the same rate on all fractional parts of an ounce, which tax shall be computed based on the net weight listed by the manufacturer.*

2. *Upon tobacco products other than moist snuff, at the rate of 10 percent of the manufacturer's sales price of such tobacco products.*

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

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

INTRODUCED

HB1764