

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 381

An Act to amend and reenact §§ 3.2-4209, 58.1-1003, 58.1-1008, 58.1-1008.1, 58.1-1009, and 58.1-1021.02:1 of the Code of Virginia, relating to cigarette and other tobacco products taxes; electronic filing of reports and electronic purchase of cigarette tax stamps.

[S 1021]

Approved March 14, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-4209, 58.1-1003, 58.1-1008, 58.1-1008.1, 58.1-1009, and 58.1-1021.02:1 of the Code of Virginia are amended and reenacted 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.

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

A. Except as otherwise specifically provided pursuant to § 58.1-1003.2, the taxes imposed by this chapter 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.

§ 58.1-1008. Monthly reports of stamping agents; penalty.

In addition to the reporting requirements imposed by § 58.1-1003, every stamping agent qualifying as such with the Department shall be required to file a report between the first and twentieth of each month, covering the purchase or receipt by them of all cigarettes during the preceding month. The report shall give in detail the different kinds and quantities of cigarettes so purchased or received by them during the preceding month. The report shall also list all orders for cigarettes purchased through such wholesale dealer from without this Commonwealth on a drop shipment and consigned direct to the person ordering such cigarettes through such stamping agent. *The Department may allow such reports to be filed electronically.* If, upon examination of invoices of any stamping agent, such agent is unable to furnish evidence to the Department of sufficient stamp purchases to cover unstamped cigarettes purchased by him, the prima facie presumption shall arise that such cigarettes were sold without the proper stamps affixed thereto in violation of § 58.1-1003. The Department may impose a penalty of \$250, to be assessed and collected by the Department as other taxes are collected, on any stamping agent for each failure or refusal to file the report, or portion thereof, required by this section or by § 3.2-4209 in the manner and time allowed. The Department may revoke a stamping permit for up to one year if the stamping agent fails to file more than one of the required reports in a timely manner in any calendar year. After such time, the stamping agent must reapply to the Department for a stamping permit. The Department may also impose a penalty, to be assessed and collected by the Department as other taxes are collected, of \$250 per pack of cigarettes on any person found to be selling cigarettes in Virginia after his stamping permit has been revoked. Each pack of cigarettes sold shall be considered a separate offense. Where willful intent exists, as defined in § 58.1-1013, the penalty shall be \$2,500 per pack.

§ 58.1-1008.1. Monthly reports of tobacco product manufacturers.

Every manufacturer producing cigarettes in or shipping cigarettes into or within the Commonwealth shall file a report with the Department between the first and tenth day of each month identifying all purchasers of cigarettes by name and address with the quantities and brands of cigarettes purchased during the preceding month, and shall provide any other information the Department deems appropriate for the administration of this title or Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2. *The Department may allow such reports to be filed electronically.* The Department shall have the power to enter upon the premises of any such manufacturer during its regular business hours to examine or cause to be examined, by any agent or representative designated by the Department for that purpose, any books, papers, records, invoices, or memoranda, etc., relating to (i) the information required in such report, or (ii) the manufacturer's compliance with this section.

Any manufacturer subject to the provisions of this section who fails or refuses to file the report required by this section, or who upon request by a duly authorized agent or representative of the Department fails or refuses to allow an audit or inspection of records as provided herein, is guilty of a Class 2 misdemeanor. In addition, the Department may impose a civil penalty not to exceed \$5,000 against any manufacturer subject to the provisions of this section for such failure or refusal. Each failure or refusal shall constitute a separate violation.

For the purposes of this section:

"Manufacturer" means tobacco product manufacturer, as that term is defined in § 3.2-4200.

"Purchasers" means any person or persons purchasing or receiving cigarettes for resale, including wholesalers and retailers, or any other person or persons purchasing cigarettes directly from a manufacturer within the Commonwealth.

§ 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 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 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 the face amount of approximately 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.

§ 58.1-1021.02:1. Reports by manufacturers of tobacco products.

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 whom 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 this article. 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.