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HOUSE BILL NO. 1036

Offered January 10, 2024

Prefiled January 10, 2024

A *BILL to amend and reenact §§ 58.1-1021.01, 58.1-3830, 58.1-3832.1, and 58.1-3840 of the Code of Virginia and to amend the Code of Virginia by adding in Article 7 of Chapter 38 of Title 58.1 a section numbered 58.1-3832.2, relating to tobacco products tax; local tax authority; nicotine vapor products.*

Patron—Bloxom

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1021.01, 58.1-3830, 58.1-3832.1, and 58.1-3840 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 7 of Chapter 38 of Title 58.1 a section numbered 58.1-3832.2 as follows:

§ 58.1-1021.01. Definitions.

As used in this article, unless the context requires a different meaning:

"Actual cost" means the actual price paid by a remote retail seller for each individual stock keeping unit or SKU.

"Alternative nicotine product" means any noncombustible product containing nicotine that is not made of tobacco and is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine product" does not include any nicotine vapor product or any product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, other than any roll of tobacco that is a cigarette as such term is defined in § 58.1-1000.

"Closed system" means any nicotine vapor product capable of utilizing a disposable container that is (i) prefilled with liquid nicotine and sealed by the manufacturer, (ii) not easily refillable or intended or designed to be refillable, and (iii) intended or used to dispense liquid nicotine for use in a nicotine vapor product that is intended or designed for reuse. "Closed system" does not include any open system.

"Consumer" means the person who is the end or final user of tobacco products.

"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.

"Heated tobacco product" means a product containing tobacco that produces an inhalable aerosol (i) by heating the tobacco by means of an electronic device without combustion of the tobacco or (ii) by heat generated from a combustion source that only or primarily heats rather than burns the tobacco.

"Liquid nicotine" means a liquid or other substance containing nicotine in any concentration that is sold, marketed, or intended for use in a nicotine vapor product.

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

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

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

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

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

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59 products to a distributor.

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

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

64 "Moist snuff" means a tobacco product consisting of finely cut, ground, or powdered tobacco that is
65 not intended to be smoked but shall not include any finely cut, ground, or powdered tobacco that is
66 intended to be placed in the nasal cavity.

67 "Nicotine vapor product" means any noncombustible product containing nicotine that employs a
68 heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,
69 regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form,
70 *including liquid nicotine*. "Nicotine vapor product" includes any electronic cigarette, electronic cigar,
71 electronic cigarillo, electronic pipe, *closed system*, *open system*, or similar product or device and any
72 cartridge or other container of nicotine in a solution or other form, *including liquid nicotine*, that is
73 intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic
74 pipe, or similar product or device. "Nicotine vapor product" does not include any product regulated by
75 the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

76 "*Open system*" means a nicotine vapor product designed and intended by the manufacturer to be
77 reusable and refilled with liquid nicotine of the end user's choice. "*Open system*" does not include any
78 closed system.

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

81 "Pipe tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is
82 suitable for use and likely to be offered or purchased by consumers as tobacco to be smoked in a pipe.

83 "Remote retail sale" means any sale of cigars or pipe tobacco to a consumer in the Commonwealth
84 when (i) the consumer submits the order for the sale by means of a telephone or other method of voice
85 transmission, the mail, or the Internet or other online service, or the seller is otherwise not in the
86 physical presence of the consumer when the request for the purchase or order is made, or (ii) the cigars
87 or pipe tobacco are delivered to the consumer by common carrier, private delivery service, or other
88 method of remote delivery, or the seller is not in the physical presence of the consumer when the buyer
89 obtains possession of the cigars or pipe tobacco.

90 "Remote retail seller" means a person located within or outside of this state that makes remote retail
91 sales of cigars or pipe tobacco.

92 "Retail dealer" means every person who sells or offers for sale any tobacco product to consumers at
93 retail in a transaction other than a remote retail sale.

94 "SKU" means an individual stock keeping unit identifier used for tracking inventory.

95 "Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702(a) of the Internal
96 Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702(m)
97 of the Internal Revenue Code, and as such section may be amended; or (iii) "pipe tobacco" as defined in
98 § 5702(n) of the Internal Revenue Code, and as such section may be amended. "Tobacco products" shall
99 also include loose leaf tobacco.

100 Article 7.

101 Cigarette and Nicotine Vapor Product Tax.

102 § 58.1-3830. Local cigarette and nicotine vapor product taxes authorized; use of dual die or 103 stamp to evidence payment of local tax on cigarettes.

104 A. As used in this article, unless the context requires a different meaning, "*nicotine vapor product*"
105 means the same as such term is defined in § 58.1-1021.01.

106 B. 1. Any locality is authorized to levy taxes upon the sale or use of cigarettes. The governing body
107 of any locality that levies a cigarette tax and permits the use of meter impressions or stamps to evidence
108 its payment may authorize an officer of the local or joint enforcement authority to enter into an
109 arrangement with the Department of Taxation under which a tobacco wholesaler who so desires may use
110 a dual die or stamp to evidence the payment of both the local tax and the state tax, and the Department
111 is hereby authorized to enter into such an arrangement. The procedure under such an arrangement shall
112 be such as may be agreed upon by and between the authorized local or joint enforcement authority
113 officer and the Department.

114 2. Any locality may by ordinance impose a tax on the sale or use of nicotine vapor products and on
115 such terms as determined by the governing body of the county, city, or town.

116 B. C. Any county cigarette or nicotine vapor product tax imposed shall not apply within the limits of
117 any town located in such county where such town now, or hereafter, imposes a town cigarette or
118 nicotine vapor product tax. However, if the governing body of any such town shall provide that a
119 county cigarette or nicotine vapor product tax, as well as the town cigarette or nicotine vapor product
120 tax, shall apply within the limits of such town, then such cigarette or nicotine vapor product tax may be

imposed by the county within such town.

C. D. 1. The maximum tax rate imposed by a locality on cigarettes pursuant to the provisions of this section shall be as follows:

1. *a.* If such locality is (i) a city or town that, on January 1, 2020, had in effect a rate not exceeding two cents (\$0.02) per cigarette sold or (ii) a county, then the maximum rate shall be two cents (\$0.02) per cigarette sold.

2. *b.* If such locality is a city or town that, on January 1, 2020, had in effect a rate exceeding two cents (\$0.02) per cigarette sold, then the maximum rate shall be the rate in effect on January 1, 2020.

2. *The maximum tax rate imposed by a locality on nicotine vapor products pursuant to the provisions of this section may exceed the rate of tax imposed on nicotine vapor products or liquid nicotine as otherwise provided by Virginia law.*

D. E. Any locality that increases its tax rate on cigarettes or nicotine vapor products shall, for one calendar year after the increase, allow a person with unsold inventory to pay the tax increase on the unsold inventory by filing a return, rather than requiring the use of a stamp or meter impression. Such return shall identify the amount of unsold inventory, the amount of tax paid on such unsold inventory, and the amount of tax due as a result of the tax rate increase. Such return shall be due six calendar months after the effective date of the tax rate increase. For purposes of this subsection, "unsold inventory" means (i) cigarettes held prior to the tax rate increase and (ii) net volume of nicotine vapor products held prior to the tax rate increase.

§ 58.1-3832.1. Regional cigarette tax boards.

A. As used in this section:

"Member locality" means a locality that elects to become a member of a regional cigarette tax board and have its local cigarette tax administered by the board.

"Region" means the group of localities for which the regional cigarette tax board administers local cigarette taxes.

"Regional cigarette tax board" means a board established by a group of at least six member localities pursuant to their powers under this article, Chapter 13 (§ 15.2-1300 et seq.) of Title 15.2, and the Regional Cooperation Act (§ 15.2-4200 et seq.), with the purpose of administering local cigarette taxes on a regional basis subject to the provisions of this section.

B. A regional cigarette tax board shall have the following duties:

1. Providing for the use of a uniform meter impression or stamp as evidence of payment of any local cigarette tax within the region.

2. Entering into an arrangement, on behalf of or in cooperation with its member localities, with the Department pursuant to the provisions of subsection A B of § 58.1-3830, for the use of a dual die or stamp as evidence of payment of any applicable local and state tax.

3. Providing a single point of contact for a stamping agent authorized under this article or Chapter 10 (§ 58.1-1000) to remit local cigarette taxes due to any member locality.

4. Providing a discount to a stamping agent as compensation for accounting for the tax due under this article. The discount shall be in the amount of two percent of the tax otherwise due.

5. Distributing any local cigarette taxes collected by the board to the appropriate member locality.

6. Enforcing all local cigarette tax ordinances within the region.

7. Promoting uniformity of cigarette tax ordinances among its member localities.

8. To the extent possible, encouraging uniformity of cigarette tax rates among its member localities.

9. Allowing persons with unsold inventory subject to tax increase to pay such increase by filing a return consistent with the provisions of subsection D E of § 58.1-3830.

10. Accomplishing any other purpose that helps promote the uniform administration of local cigarette taxes throughout the region.

§ 58.1-3832.2. Local ordinances to administer and enforce local taxes on sale or use of nicotine vapor products.

A. 1. Any county, city, or town imposing a tax upon the sale or use of nicotine vapor products may by ordinance provide for the administration and enforcement of any such tax. The ordinance may provide for the registration of any distributor, wholesaler, vendor, retailer, or other person selling, storing, or possessing liquid nicotine within or transporting nicotine vapor products 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 person. The county, city, or town may revoke any registration if such bond is impaired but for no other reason. Any such distributor, wholesaler, vendor, retailer, or other person that has no business location or residence in the county, city, or town and that sells, stores, or possesses in the county, city, or town any nicotine vapor products shall, by virtue of such sale, storage, or possession, submit the person to the legal jurisdiction of the locality and appoint as the person's attorney for any service of lawful process such officer or person as may be designated

in the local ordinance for such purpose. A copy of any process served on the officer or person shall be sent forthwith by registered mail to the distributor, wholesaler, vendor, retailer, or other person.

2. The ordinance may (i) impose a penalty for the late payment of any nicotine vapor products tax not to exceed 10 percent per month, (ii) impose a penalty for fraud or evasion of such tax not to exceed 50 percent, and (iii) assess interest not to exceed three quarters of one percent per month, upon any nicotine vapor products tax found to be overdue and unpaid.

B. Any county, city, or town imposing a tax upon the sale or use of nicotine vapor products may by ordinance delegate its administrative and enforcement authority under its ordinance to one agency or authority pursuant to the provisions of § 15.2-1300. Such agency or authority may employ such staff and agents and promulgate such rules and regulations as are necessary to administer and enforce the vapor products ordinance of the county, city, or town.

§ 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 and, to the extent authorized in this chapter, any county may impose excise taxes on cigarettes, nicotine vapor products, 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 U.S. 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 aged or infirm individuals, individuals with disabilities, battered women, narcotic addicts, or alcoholics; (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; or (i) sellers at local farmers markets and roadside stands, when such sellers' annual income from such sales does not exceed \$2,500. For the exemption described in clause (i), the sellers' annual income shall include income from sales at all local farmers markets and roadside stands, not just those sales occurring in the locality imposing the tax.

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, or needy individuals or individuals with blindness or other disabilities 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, or needy individuals or individuals with blindness or other disabilities 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

244 levied on admissions paid for any event held at its city- or town-owned civic centers, stadiums, and
245 amphitheaters.
246 D. Expired.
247 2. That the Department of Taxation shall consult with localities, the Virginia Association of
248 Counties, and the Virginia Municipal League regarding the implementation and administration of
249 the provisions of this act.

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