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HOUSE BILL NO. 1572
Offered January 13, 2025
Prefiled December 30, 2024

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

Patron—Ware

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

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

§ 58.1-1021.02. Tax on tobacco products and liquid nicotine.

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 and liquid nicotine in the Commonwealth by any person engaged in business as a distributor or remote retail seller thereof, at the following rates:

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

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

a. \$0.21 for each loose leaf tobacco single-unit;

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

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

d. For any other unit, pouch, or package of loose leaf tobacco, the tax shall be by net weight and shall be \$0.21 per unit, pouch, or package plus \$0.21 for each increment of four ounces or portion thereof that the loose leaf tobacco exceeds 16 ounces.

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

3. Except as otherwise provided, upon tobacco products other than *cigars*, moist snuff, or loose leaf tobacco, at the rate of 10 percent of the manufacturer's sales price of such tobacco products.

4. *Upon cigars, at the rate of 20 percent of the manufacturer's sales price or 30 cents (\$0.30) per cigar, whichever is lower.*

Upon cigars and pipe tobacco products sold by remote retail sellers, the tax rates delineated in this subdivision shall apply to:

a. The actual cost; or

b. If the actual cost is not available, the average of the actual cost over the 12 calendar months before January 1 of the year in which the sale occurs.

4. 5. a. Upon the privilege of selling or dealing in liquid nicotine in the Commonwealth by any person engaged in business as a distributor of liquid nicotine, at the following rates:

(1) Upon liquid nicotine in closed systems at the rate of \$0.066 per milliliter beginning July 1, 2024, for taxable sales or purchases occurring on and after such date.

(2) Upon liquid nicotine in open systems at the rate of 10 percent of the wholesale price beginning July 1, 2024, for taxable sales or purchases occurring on and after such date.

b. For any transaction involving liquid nicotine between a distributor and a retail dealer, both the distributor and the retail dealer shall maintain and retain records of any invoice or sales receipt that shall include itemized lists of the types of products included in such transaction, the tax due on each product pursuant to this subsection, and the total amount of taxes paid. In every instance, a distributor shall be responsible for paying the tax on liquid nicotine pursuant to this subdivision 4 at the time of sale to a retail dealer. Such taxes shall apply only to liquid nicotine and not to any batteries, filters, or other mechanical or aesthetic components of liquid nicotine in a closed system or an open system.

Such tax shall be imposed at the time the remote retail seller located within or outside the Commonwealth makes a remote retail sale to a consumer within the Commonwealth. It is the intent and purpose of this subdivision that the remote retail seller be 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, including cigars and pipe tobacco sold in the Commonwealth.

Except as otherwise provided, such tax shall be imposed on tobacco products (i) at the time of retail sale by a retail dealer or distributor; (ii) at the time the distributor makes, manufactures, or fabricates tobacco

59 products in the Commonwealth for sale in the Commonwealth; or (iii) at the time the distributor ships or
60 transports tobacco products to retailers in the Commonwealth to be sold by those retailers. It is the intent and
61 purpose of this article that the distributor who first possesses the tobacco product subject to this tax in the
62 Commonwealth shall be the distributor liable for the tax. It is further the intent and purpose of this article to
63 impose the tax once and only once on all tobacco products for sale in the Commonwealth.

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

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

70 **2. That the Department of Taxation (the Department) shall update its form TT-8, Virginia Tobacco**
71 **Products Tax Return (OTP), used for purposes of the tobacco products tax imposed by Article 2.1 (§**
72 **58.1-1021.01 et seq.) of Chapter 10 of Title 58.1 of the Code of Virginia, as amended by this act, to**
73 **begin collecting data on the number of premium cigars sold in the Commonwealth as a distinct**
74 **category from all other cigars. Such data collection shall also include all information necessary to**
75 **estimate the fiscal impact of adopting a cap of 30 cents (\$0.30) per cigar or another rate on the tobacco**
76 **products tax imposed on premium cigars. For purposes of this act, "premium cigar" means the same**
77 **as that term is defined in 21 C.F.R. § 1114.3. The Department shall update its form as soon as**
78 **practicable and provide a report of the data so collected and estimated fiscal impacts to the Chairmen**
79 **of the House Committee on Finance and the Senate Committee on Finance and Appropriations no later**
80 **than December 1, 2025.**