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HOUSE BILL NO. 2488

Offered January 13, 2025

Prefiled January 8, 2025

A BILL to amend and reenact §§ 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.

Patrons—Green; Senator: Diggs

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 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:

Article 7.

Cigarette and Nicotine Vapor Product Tax.

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

A. As used in this article, "nicotine vapor product" means the same as such term is defined in § 58.1-1021 .01.

B. 1. Any locality is authorized to levy taxes upon the sale or use of cigarettes. The governing body of any locality that levies a cigarette tax and permits the use of meter impressions or stamps to evidence its payment may authorize an officer of the local or joint enforcement authority to enter into an arrangement with the Department of Taxation under which a tobacco wholesaler who so desires may use a dual die or stamp to evidence the payment of both the local tax and the state tax, and 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 local or joint enforcement authority officer and the Department.

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

~~B- C.~~ Any county cigarette or nicotine vapor product 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 or nicotine vapor product tax. However, if the governing body of any such town shall provide that a county cigarette or nicotine vapor product tax, as well as the town cigarette or nicotine vapor product 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.

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

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

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

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

69 3. Providing a single point of contact for a stamping agent authorized under this article or Chapter 10 (§  
 70 58.1-1000) to remit local cigarette taxes due to any member locality.

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

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

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

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

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

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

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

81 **§ 58.1-3832.2. Local ordinances to administer and enforce local taxes on sale or use of nicotine vapor**  
 82 **products.**

83 A. 1. Any county, city, or town imposing a tax upon the sale or use of nicotine vapor products may by  
 84 ordinance provide for the administration and enforcement of any such tax. The ordinance may provide for the  
 85 registration of any distributor, wholesaler, vendor, retailer, or other person selling, storing, or possessing  
 86 nicotine vapor products within or transporting nicotine vapor products within or into such taxing jurisdiction  
 87 for sale or use. Such registration may be conditioned upon the filing of a bond with a surety company  
 88 authorized to do business in Virginia as surety, which bond shall not exceed one and one-half times the  
 89 average monthly liability of such person. The county, city, or town may revoke any registration if such bond  
 90 is impaired but for no other reason. Any such distributor, wholesaler, vendor, retailer, or other person that  
 91 has no business location or residence in the county, city, or town and that sells, stores, or possesses in the  
 92 county, city, or town any nicotine vapor products shall, by virtue of such sale, storage, or possession, submit  
 93 the person to the legal jurisdiction of the locality and appoint as the person's attorney for any service of  
 94 lawful process such officer or person as may be designated in the local ordinance for such purpose. A copy of  
 95 any process served on the officer or person shall be sent forthwith by registered mail to the distributor,  
 96 wholesaler, vendor, retailer, or other person.

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

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

106 **§ 58.1-3840. Certain excise taxes permitted.**

107 A. The provisions of Chapter 6 (§ 58.1-600 et seq.) to the contrary notwithstanding, any city or town  
 108 having general taxing powers established by charter pursuant to or consistent with the provisions of §  
 109 15.2-1104 and, to the extent authorized in this chapter, any county may impose excise taxes on cigarettes,  
 110 nicotine vapor products, admissions, transient room rentals, meals, and travel campgrounds. No such taxes on  
 111 meals may be imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in  
 112 addition to the sales price of the meal; (ii) that portion of the amount paid by the purchaser as a mandatory  
 113 gratuity or service charge added by the restaurant in addition to the sales price of the meal, but only to the  
 114 extent that such mandatory gratuity or service charge does not exceed 20 percent of the sales price; or (iii)  
 115 food and beverages sold through vending machines or on any tangible personal property purchased with food  
 116 coupons issued by the U.S. Department of Agriculture under the Food Stamp Program or drafts issued  
 117 through the Virginia Special Supplemental Food Program for Women, Infants, and Children. No such taxes  
 118 on meals may be imposed when sold or provided by (a) restaurants, as such term is defined in § 35.1-1, to  
 119 their employees as part of their compensation when no charge is made to the employee; (b) volunteer fire

120 departments and volunteer emergency medical services agencies; nonprofit churches or other religious  
 121 bodies; or educational, charitable, fraternal, or benevolent organizations, the first three times per calendar  
 122 year and, beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales  
 123 of meals (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of  
 124 which are to be used by such church, religious body or organization exclusively for nonprofit educational,  
 125 charitable, benevolent, or religious purposes; (c) churches that serve meals for their members as a regular part  
 126 of their religious observances; (d) public or private elementary or secondary schools or institutions of higher  
 127 education to their students or employees; (e) hospitals, medical clinics, convalescent homes, nursing homes,  
 128 or other extended care facilities to patients or residents thereof; (f) day care centers; (g) homes for aged or  
 129 infirm individuals, individuals with disabilities, battered women, narcotic addicts, or alcoholics; (h)  
 130 age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are  
 131 served and fees are charged for such food and beverages and are included in rental fees; or (i) sellers at local  
 132 farmers markets and roadside stands, when such sellers' annual income from such sales does not exceed  
 133 \$2,500. For the exemption described in clause (i), the sellers' annual income shall include income from sales  
 134 at all local farmers markets and roadside stands, not just those sales occurring in the locality imposing the tax.

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

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

146 B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this  
 147 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises  
 148 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977,  
 149 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following  
 150 items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting  
 151 primarily of an assortment of vegetables, and nonfactory sealed beverages.

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

155 D. Expired.

156 **2. That the Department of Taxation shall consult with localities, the Virginia Association of Counties,**  
 157 **and the Virginia Municipal League regarding the implementation and administration of the provisions**  
 158 **of this act.**