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HOUSE BILL NO. 2488
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Finance
on _____)
(Patron Prior to Substitute—Delegate Green)

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.

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*~~

31 *nicotine vapor product* tax, as well as the town cigarette *or nicotine vapor product* tax, shall apply within the
32 limits of such town, then such cigarette *or nicotine vapor product* tax may be imposed by the county within
33 such town.

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

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

39 ~~2. b.~~ If such locality is a city or town that, on January 1, 2020, had in effect a rate exceeding two cents
40 (\$0.02) per cigarette sold, then the maximum rate shall be the rate in effect on January 1, 2020.

41 *2. The maximum tax rate imposed by a locality on nicotine vapor products pursuant to the provisions of*
42 *this section shall not exceed the lesser of the rate of 10 percent of the wholesale price or five cents (\$0.05)*
43 *per milliliter.*

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

51 **§ 58.1-3832.1. Regional cigarette tax boards.**

52 A. As used in this section:

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

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

57 "Regional cigarette tax board" means a board established by a group of at least six member localities
58 pursuant to their powers under this article, Chapter 13 (§ 15.2-1300 et seq.) of Title 15.2, and the Regional
59 Cooperation Act (§ 15.2-4200 et seq.), with the purpose of administering local cigarette *and nicotine vapor*

60 *product* taxes on a regional basis subject to the provisions of this section.

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

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

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

67 3. Providing a single point of contact for a stamping agent authorized under this article or Chapter 10 (§
68 58.1-1000) to remit local cigarette taxes due to any member locality.

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

71 5. Distributing any local cigarette *or nicotine vapor product* taxes collected by the board to the
72 appropriate member locality.

73 6. Enforcing all local cigarette *and nicotine vapor product* tax ordinances within the region.

74 7. Promoting uniformity of cigarette *and nicotine vapor product* tax ordinances among its member
75 localities.

76 8. To the extent possible, encouraging uniformity of cigarette *and nicotine vapor product* tax rates among
77 its member localities.

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

80 10. Accomplishing any other purpose that helps promote the uniform administration of local cigarette *and*
81 *nicotine vapor product* taxes throughout the region.

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

84 *A. 1. Any county, city, or town imposing a tax upon the sale or use of nicotine vapor products may by*
85 *ordinance provide for the administration and enforcement of any such tax. The ordinance may provide for the*
86 *registration of any distributor, wholesaler, vendor, retailer, or other person selling, storing, or possessing*
87 *nicotine vapor products within or transporting nicotine vapor products within or into such taxing jurisdiction*
88 *for sale or use. Such registration may be conditioned upon the filing of a bond with a surety company*

89 *authorized to do business in Virginia as surety, which bond shall not exceed one and one-half times the*
90 *average monthly liability of such person. The county, city, or town may revoke any registration if such bond*
91 *is impaired but for no other reason. Any such distributor, wholesaler, vendor, retailer, or other person that*
92 *has no business location or residence in the county, city, or town and that sells, stores, or possesses in the*
93 *county, city, or town any nicotine vapor products shall, by virtue of such sale, storage, or possession, submit*
94 *the person to the legal jurisdiction of the locality and appoint as the person's attorney for any service of*
95 *lawful process such officer or person as may be designated in the local ordinance for such purpose. A copy of*
96 *any process served on the officer or person shall be sent forthwith by registered mail to the distributor,*
97 *wholesaler, vendor, retailer, or other person.*

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

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

107 **§ 58.1-3840. Certain excise taxes permitted.**

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

118 through the Virginia Special Supplemental Food Program for Women, Infants, and Children. No such taxes
119 on meals may be imposed when sold or provided by (a) restaurants, as such term is defined in § 35.1-1, to
120 their employees as part of their compensation when no charge is made to the employee; (b) volunteer fire
121 departments and volunteer emergency medical services agencies; nonprofit churches or other religious
122 bodies; or educational, charitable, fraternal, or benevolent organizations, the first three times per calendar
123 year and, beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales
124 of meals (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of
125 which are to be used by such church, religious body or organization exclusively for nonprofit educational,
126 charitable, benevolent, or religious purposes; (c) churches that serve meals for their members as a regular part
127 of their religious observances; (d) public or private elementary or secondary schools or institutions of higher
128 education to their students or employees; (e) hospitals, medical clinics, convalescent homes, nursing homes,
129 or other extended care facilities to patients or residents thereof; (f) day care centers; (g) homes for aged or
130 infirm individuals, individuals with disabilities, battered women, narcotic addicts, or alcoholics; (h)
131 age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are
132 served and fees are charged for such food and beverages and are included in rental fees; or (i) sellers at local
133 farmers markets and roadside stands, when such sellers' annual income from such sales does not exceed
134 \$2,500. For the exemption described in clause (i), the sellers' annual income shall include income from sales
135 at all local farmers markets and roadside stands, not just those sales occurring in the locality imposing the tax.

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

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

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

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

156 D. Expired.

157 **2. That the provisions of the first enactment of this act shall become effective on July 1, 2026.**

158 **3. That the Department of Taxation shall convene a work group consisting of representatives from**
159 **localities of the Commonwealth, the Virginia Association of Counties, the Commissioners of the**
160 **Revenue Association, local tax stakeholders, and the Virginia Municipal League to develop a standard**
161 **form for localities to use to implement and administer the provisions of this act.**