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HOUSE BILL NO. 188

Offered January 9, 2002

Prefiled January 2, 2002

A *BILL to amend and reenact §§ 58.1-2201, 58.1-2208, 58.1-2230, 58.1-2232, 58.1-2255, and 58.1-2275 of the Code of Virginia, relating to motor fuels tax.*

Patrons—Parrish; Senator: Colgan

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2201, 58.1-2208, 58.1-2230, 58.1-2232, 58.1-2255, and 58.1-2275 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2201. Definitions.

As used in this chapter, unless the context requires otherwise:

"Alternative fuel" means a combustible gas, liquid or other energy source that can be used to generate power to operate a highway vehicle and that is not a motor fuel.

"Assessment" means a written determination by the Department of the amount of taxes owed by a taxpayer. Assessments made by the Department shall be deemed to be made when a written notice of assessment is delivered to the taxpayer by the Department or is mailed by certified or registered mail to the taxpayer at the last known address appearing in the Commissioner's files.

"Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation jet fuel in any fiscal year and is licensed pursuant to Article 2 (§ 58.1-2204 et seq.) of this chapter.

"Aviation fuel" means aviation gasoline or aviation jet fuel.

"Aviation gasoline" means fuel designed for use in the operation of aircraft other than jet aircraft, and sold or used for that purpose.

"Aviation jet fuel" means fuel designed for use in the operation of jet or turbo-prop aircraft, and sold or used for that purpose.

"Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

"Blender" means a person who produces blended fuel outside the terminal transfer system.

"Bonded aviation jet fuel" means aviation jet fuel held in bonded storage under United States Customs Law and delivered into a fuel supply tank of aircraft operated by certificated air carriers on international flights.

"Bonded importer" means a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in which (i) the state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state; (ii) the supplier of the fuel is not an elective supplier; or (iii) the supplier of the fuel is not a permissive supplier.

"Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

"Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle, watercraft, or aircraft.

"Bulk user of alternative fuel" means a person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.

"Commercial watercraft" means a watercraft employed in the business of commercial fishing, transporting persons or property for compensation or hire, or any other trade or business unless the watercraft is used in an activity of a type generally considered entertainment, amusement, or recreation.

"Commissioner" means the Commissioner of the Department of Motor Vehicles.

"Corporate or partnership officer" means an officer or director of a corporation, partner of a partnership, or member of a limited liability company, who as such officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax collection, accounting, or remitting obligations.

"Department" means the Department of Motor Vehicles, acting directly or through its duly authorized officers and agents.

"Designated inspection site" means any state highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Commissioner to be used as a fuel

INTRODUCED

HB188

59 inspection site.

60 "Destination state" means the state, territory, or foreign country to which motor fuel is directed for
61 delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the
62 purpose of resale or use. The term shall not include a tribal reservation of any recognized Native
63 American tribe.

64 "Diesel fuel" means any liquid that is suitable for use as a fuel in a diesel-powered highway vehicle
65 or watercraft. The term shall include undyed #1 fuel oil and undyed #2 fuel oil, but shall not include
66 gasoline or aviation jet fuel.

67 "Distributor" means a person who acquires motor fuel from a supplier or from another distributor for
68 subsequent sale.

69 "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C.
70 § 4082.

71 "Elective supplier" means a supplier who (i) is required to be licensed in the Commonwealth and (ii)
72 elects to collect the tax due the Commonwealth on motor fuel that is removed at a terminal located in
73 another state and has Virginia as its destination state.

74 "End seller" means the person who sells fuel to the ultimate user of the fuel.

75 "Export" means to obtain motor fuel in Virginia for sale or ~~other~~ distribution in another state,
76 territory, or foreign country. Motor fuel delivered out-of-state by or for the seller constitutes an export
77 by the seller, and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the
78 purchaser.

79 *"Exporter" means a person who obtains motor fuel in Virginia for sale or distribution in another*
80 *state, territory, or foreign country.*

81 "Fuel" includes motor fuel and alternative fuel.

82 "Fuel alcohol" means methanol or fuel grade ethanol.

83 "Fuel alcohol provider" means a person who (i) produces fuel alcohol or (ii) imports fuel alcohol
84 outside the terminal transfer system by means of a marine vessel, a transport truck, or a railroad tank
85 car.

86 "Gasohol" means a blended fuel composed of gasoline and fuel grade ethanol.

87 "Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and
88 are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have
89 an American Society for Testing Materials octane number of less than seventy-five as determined by the
90 motor method; (ii) a petroleum product component of gasoline, such as naphtha, reformat, or toluene;
91 (iii) gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an
92 aircraft engine.

93 "Governmental entity" means (i) the Commonwealth or any political subdivision thereof or (ii) the
94 United States or its departments, agencies, and instrumentalities.

95 "Gross gallons" means an amount of motor fuel measured in gallons, exclusive of any temperature,
96 pressure, or other adjustments.

97 "Heating oil" means any combustible liquid, including but not limited to dyed #1 fuel oil, dyed #2
98 fuel oil, and kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial
99 processing purposes.

100 "Highway" means every way or place of whatever nature open to the use of the public for purposes
101 of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.

102 "Highway vehicle" means a self-propelled vehicle designed for use on a highway.

103 "Import" means to bring motor fuel into Virginia by any means of conveyance other than in the fuel
104 supply tank of a highway vehicle. Motor fuel delivered into Virginia from out-of-state by or for the
105 seller constitutes an import by the seller, and motor fuel delivered into Virginia from out-of-state by or
106 for the purchaser constitutes an import by the purchaser.

107 *"Importer" means a person who obtains motor fuel outside of Virginia and brings that motor fuel*
108 *into Virginia by any means of conveyance other than in the fuel supply tank of a highway vehicle. For*
109 *purposes of this chapter, a motor fuel transporter shall not be considered an importer.*

110 "In-state-only supplier" means (i) a supplier who is required to have a license and who elects not to
111 collect the tax due the Commonwealth on motor fuel that is removed by that supplier at a terminal
112 located in another state and has Virginia as its destination state or (ii) a supplier who does business only
113 in Virginia.

114 "Licensee" means any person licensed by the Commissioner pursuant to Article 2 (§ 58.1-2204 et
115 seq.) of this chapter or § 58.1-2244.

116 "Liquid" means any substance that is liquid above its freezing point.

117 "Motor fuel" means gasoline, diesel fuel, blended fuel, and aviation fuel.

118 "Motor fuel transporter" means a person who transports motor fuel ~~outside the terminal transfer~~
119 ~~system for-hire~~ by means of a *tank wagon*, transport truck, a railroad tank car, or a marine vessel.

120 "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of

sixty degrees Fahrenheit and a pressure of 14.7 pounds per square inch.

"Occasional importer" means any person who (i) imports motor fuel by any means outside the terminal transfer system and (ii) is not required to be licensed as a bonded importer.

"Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a supplier's license under this chapter.

"Person" means any individual; firm; cooperative; association; corporation; limited liability corporation; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy; club, society or other group or combination acting as a unit; or public body, including but not limited to the Commonwealth, any other state, and any agency, department, institution, political subdivision or instrumentality of the Commonwealth or any other state.

"Position holder" means a person who holds an inventory position of motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds an "inventory position of motor fuel" when he has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

"Principal" means (i) if a partnership, all its partners; (ii) if a corporation, all its officers, directors, and controlling direct or indirect owners; (iii) if a limited liability company, all its members; and (iv) or an individual.

"Provider of alternative fuel" means a person who (i) acquires alternative fuel for sale or delivery to a bulk user or a retailer; (ii) maintains storage facilities for alternative fuel, part or all of which the person sells to someone other than a bulk user or a retailer to operate a highway vehicle; (iii) sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle; or (iv) imports alternative fuel into Virginia, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for sale or use by that person to operate a highway vehicle.

"Rack" means a facility that contains a mechanism for delivering motor fuel from a refinery, terminal, or bulk plant into a transport truck, railroad tank car, or other means of transfer that is outside the terminal transfer system.

"Refiner" means any person who owns, operates, or otherwise controls a refinery.

"Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

"Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or other means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

"Retailer" means a person who (i) maintains storage facilities for motor fuel and (ii) sells the fuel at retail or dispenses the fuel at a retail location.

"Retailer of alternative fuel" means a person who (i) maintains storage facilities for alternative fuel and (ii) sells ~~the fuel at retail~~ or dispenses the fuel at a retail ~~location~~, *to be used to generate power to operate a highway vehicle*.

"Supplier" means (i) a position holder, (ii) a person who receives motor fuel pursuant to a two-party exchange, or (iii) a fuel alcohol provider. A licensed supplier includes a licensed elective supplier and licensed permissive supplier.

"System transfer" means a transfer (i) of motor fuel within the terminal transfer system or (ii) of fuel grade ethanol by transport truck or railroad tank car.

"Tank wagon" means a straight truck or straight truck/trailer combination designed or used to carry fuel and having a capacity of less than 6,000 gallons.

"Terminal" means a motor fuel storage and distribution facility (i) to which a terminal control number has been assigned by the Internal Revenue Service, (ii) to which motor fuel is supplied by pipeline or marine vessel, and (iii) from which motor fuel may be removed at a rack.

"Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

"Terminal transfer system" means a motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals, and which is a "bulk transfer/terminal system" under 26 C.F.R. Part 48.4081-1.

"Transmix" means (i) the buffer or interface between two different products in a pipeline shipment or (ii) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

"Transport truck" means a tractor truck/semitrailer combination designed or used to transport cargoes of motor fuel over a highway.

"Trustee" means a person who (i) is licensed as a supplier, an elective supplier, or a permissive supplier and receives tax payments from and on behalf of a licensed or unlicensed distributor, or other person pursuant to § 58.1-2231 or (ii) is licensed as a provider of alternative fuel and receives tax payments from and on behalf of a bulk user of alternative fuel, retailer of alternative fuel or other

182 person pursuant to § 58.1-2252.

183 "Two-party exchange" means a transaction in which fuel is transferred from one licensed supplier to
184 another licensed supplier pursuant to an exchange agreement, which transaction (i) includes a transfer
185 from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on
186 the records of the terminal operator and (ii) is completed prior to removal of the product from the
187 terminal by the receiving exchange partner.

188 "Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental
189 Protection Agency or Internal Revenue Service fuel-dyeing requirements.

190 "Use" means the actual consumption or receipt of motor fuel by any person into a highway vehicle,
191 aircraft, or watercraft.

192 "Watercraft" means any vehicle used on waterways.

193 § 58.1-2208. License application procedure.

194 A. To obtain a license under this article, an applicant shall file an application with the Commissioner
195 on a form provided by the Commissioner. An application shall include the applicant's name, address,
196 federal employer identification number, and any other information required by the Commissioner.

197 B. An applicant for a license as a *motor fuel transporter*, supplier, terminal operator, importer,
198 blender, bulk user of undyed diesel fuel, retailer of undyed diesel fuel, distributor, or aviation consumer
199 shall satisfy the following requirements:

200 1. If the applicant is a corporation, the applicant shall either be incorporated in the Commonwealth
201 or authorized to transact business in the Commonwealth;

202 2. If the applicant is a limited liability company, the applicant shall be organized in the
203 Commonwealth or authorized to transact business in the Commonwealth;

204 3. If the applicant is a limited liability partnership, the applicant shall either be formed in the
205 Commonwealth or authorized to transact business in the Commonwealth; or

206 4. If the applicant is an individual or a general partnership, the applicant shall designate an agent for
207 service of process and provide the agent's name and address.

208 C. An applicant for a license as a supplier, terminal operator, blender, or permissive supplier shall
209 have a federal certificate of registry issued under 26 U.S.C. § 4101 that authorizes the applicant to enter
210 into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant who
211 is required to have a federal certificate of registry shall include the registration number of the certificate
212 on the application for a license under this section. An applicant for a license as an importer, an exporter,
213 or a distributor who has a federal certificate of registry issued under 26 U.S.C. § 4101 shall include the
214 registration number of the certificate on the application for a license under this section.

215 D. An applicant for a license as an importer or distributor shall list on the application each state
216 from which the applicant intends to import motor fuel and, if required by a state listed, shall be licensed
217 or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be
218 licensed or registered, the applicant shall provide the applicant's license or registration number of that
219 state. A licensee who intends to import motor fuel from a state not listed on his application for an
220 importer's license or a distributor's license shall provide the Commissioner written notice of such action
221 before importing motor fuel from that state. The notice shall include the information that is required on
222 the license application.

223 E. An applicant for a license as an exporter shall designate an agent located in Virginia for service
224 of process and provide the agent's name and address. An applicant for a license as an exporter or
225 distributor shall list on the application each state to which the applicant intends to export motor fuel
226 received in Virginia by means of a transfer that is outside the terminal transfer system and, if required
227 by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed
228 requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or
229 registration number of that state. A licensee who intends to export motor fuel to a state not listed on his
230 application for an exporter's license or a distributor's license shall provide the Commissioner written
231 notice of such action before exporting motor fuel to that state. The notice shall include the information
232 required on the license application.

233 § 58.1-2230. When tax return and payment are due.

234 A. A return for the tax on motor fuel levied by this chapter shall be filed with the Commissioner and
235 be in the form and contain the information required by the Commissioner. The return and the payment
236 for the tax on motor fuel levied by this chapter shall be due for each full month in a calendar year. Any
237 return and payment required under this section shall be deemed timely filed if received by the
238 Commissioner by midnight of the twentieth day of the second month succeeding the month for which
239 the return and payment are due. Each return shall report tax liabilities that accrue in the month for
240 which the return is due.

241 B. Returns and payments shall be (i) postmarked ~~by~~ *on or before* the fifteenth day of the second
242 month succeeding the month for which the return ~~is~~ *and payment are* due or (ii) received by the
243 Department by the twentieth day of the second month succeeding the month for which the return ~~is~~ *and*

payment are due. However, a monthly return of the tax for the month of May shall be (i) postmarked by June 25 or (ii) received by the Commissioner by the last business day the Department is open for business in June.

If a tax return *and* payment due date falls on a Saturday, Sunday, or a state or banking holiday, the return shall be postmarked *on or before the fifteenth day of the second month succeeding the month for which the return and payment are due* or received by the Department by midnight of the next business day the Department is open for business. This provision shall not apply to a return of the tax for the month of May.

A return *and* payment shall be deemed postmarked if it carries the official cancellation mark of the United States Postal Service or other postal or delivery services.

C. The following shall file a monthly return as required by this section:

1. A refiner;
2. A terminal operator;
3. A supplier;
4. A distributor;
5. An importer to include a bonded importer;
6. A blender;
7. An aviation consumer;
8. A person incurring liability under § 58.1-2225 for the backup tax on motor fuel; and
9. An elective supplier.

D. Notwithstanding the provisions of any other section in this chapter, the Commissioner may require all or certain licensees to file tax returns and payments electronically.

§ 58.1-2232. Notice of cancellation or reissuance of licenses; effect of notice.

A. If the Commissioner cancels the license of a distributor, importer, or aviation consumer, the Commissioner shall notify all suppliers of the cancellation. If the Commissioner issues a license to a distributor, importer or aviation consumer whose license was previously canceled, the Commissioner shall notify all suppliers of the issuance.

B. A supplier who sells motor fuel to a distributor, *importer* or aviation consumer after receiving notice from the Commissioner that the Commissioner has canceled the distributor's, *importer's* or aviation consumer's license shall be jointly and severally liable with the distributor, *importer* or aviation consumer for any tax due on motor fuel the supplier sells to the distributor, *importer* or aviation consumer after receiving the notice; however, the supplier shall not be liable for tax due on motor fuel sold to a previously unlicensed distributor, *importer* or aviation consumer after the supplier receives notice from the Commissioner that the Commissioner has issued another license to the distributor, *importer* or aviation consumer.

C. If the Commissioner cancels the license of a supplier, the Commissioner shall notify all licensed distributors, exporters, importers and aviation consumers of the cancellation. If the Commissioner issues a license to a supplier whose license was previously canceled, the Commissioner shall notify all licensed distributors, exporters, importers and aviation consumers of the issuance.

D. A licensed distributor, exporter, importer, or aviation consumer who purchases motor fuel from a supplier after receiving notice from the Commissioner that the Commissioner has canceled the supplier's license shall be jointly and severally liable with the supplier for any tax due on motor fuel purchased from the supplier after receiving the notice; however, the licensed distributor, exporter, importer, or aviation consumer shall not be liable for tax due on motor fuel purchased from a previously unlicensed supplier after the licensee receives notice from the Commissioner that the Commissioner has issued another license to the supplier.

§ 58.1-2255. Returns and payments by bulk users and retailers of alternative fuel; storage.

A. Each bulk user of alternative fuel and retailer of alternative fuel shall file a monthly informational return with the Commissioner. A monthly return covers a calendar month and is due by the twentieth day of the second month that follows such month.

The return shall include the following information and any other information required by the Commissioner:

1. The amount of alternative fuel received during the ~~quarter~~ month;
2. The amount of alternative fuel sold or used during the ~~quarter~~ month;
3. The number of gallons for which a deduction was taken during the ~~quarter~~ month pursuant to § 58.1-2254, by provider, if applicable; and
4. The number of gallons sold in exempt sales during the ~~quarter~~ month, by type of sale, and the purchaser of the fuel in the exempt sales, if applicable.

B. If the number of gallons for which an eligible retailer of alternative fuel takes a deduction during a ~~quarter~~ month exceeds the number of exempt gallons or gallon equivalent sold, the retailer of alternative fuel shall pay tax on the difference at the rate imposed by subsection A of § 58.1-2249. The

305 tax shall be payable when the informational return is due.

306 C. A bulk user of alternative fuel or a retailer of alternative fuel may store highway and nonhighway
307 alternative fuel in separate storage tanks or in the same storage tank. If highway and nonhighway
308 alternative fuel are stored in separate storage tanks, the tank for the nonhighway fuel shall be marked in
309 accordance with the requirements set by § 58.1-2279 for dyed diesel storage facilities. If highway and
310 nonhighway alternative fuel are stored in the same storage tank, the storage tank shall be equipped with
311 separate metering devices for the highway fuel and the nonhighway fuel. If the Commissioner
312 determines that a bulk user of alternative fuel or retailer of alternative fuel used or sold alternative fuel
313 to operate a highway vehicle when the fuel was dispensed from a storage tank or through a meter
314 marked for nonhighway use, all fuel delivered into that storage tank shall be presumed to have been
315 used to operate a highway vehicle.

316 § 58.1-2275. Record-keeping requirements.

317 Each (i) person required or electing to be licensed under Article 2 (§ 58.1-2204 et seq.) of this
318 chapter, (ii) distributor, *retailer* and bulk user not licensed under this chapter, and (iii) person required
319 to be licensed under § 58.1-2244, shall keep and maintain all records pertaining to fuel received,
320 produced, manufactured, refined, compounded, used, sold or delivered, together with delivery tickets,
321 invoices, bills of lading, and such other pertinent records and papers as may be required by the
322 Commissioner for the reasonable administration of this chapter. Such records shall be kept and
323 maintained for a period to include the Department's current fiscal year and the previous three fiscal
324 years.