

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 340

An Act to amend and reenact §§ 58.1-2201, 58.1-2204, 58.1-2216, 58.1-2237, 58.1-2266, 58.1-2271, and 58.1-2283 of the Code of Virginia, relating to fuels tax.

[H 17]

Approved April 8, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2201, 58.1-2204, 58.1-2216, 58.1-2237, 58.1-2266, 58.1-2271, and 58.1-2283 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 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 *or his designee* to be used as a fuel inspection site.

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

American tribe.

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

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

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

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

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

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

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

"Fuel" includes motor fuel and alternative fuel.

"Fuel alcohol" means methanol or fuel grade ethanol.

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

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

"Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method; (ii) a petroleum product component of gasoline, such as ~~naphtha~~ *naphtha*, reformat, or toluene; (iii) gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an aircraft engine.

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

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

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

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

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

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

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

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

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

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

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

"Motor fuel transporter" means a person who transports motor fuel for hire by means of *a pipeline*, a tank wagon, *a* transport truck, a railroad tank car, or a marine vessel.

"Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of 60 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 or dispenses the fuel at retail, to be used to generate power to operate a highway vehicle.

"Supplier" means (i) a position holder, or (ii) a person who receives motor fuel pursuant to a two-party exchange. 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 person pursuant to § 58.1-2252.

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

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

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

"Watercraft" means any vehicle used on waterways.

§ 58.1-2204. Persons required to be licensed.

A. A person shall obtain a license issued by the Commissioner before conducting the activities of:

1. A refiner, who shall be licensed as a supplier;
2. A supplier;
3. A terminal operator;
4. An importer;
5. An exporter;
6. A blender;
7. A motor fuel transporter;
8. A bulk user of undyed diesel fuel;
9. A retailer of undyed diesel fuel;
10. An aviation consumer;
11. A bonded importer;
12. An elective supplier; or
13. A fuel alcohol provider.

B. A person who is engaged in more than one activity for which a license is required shall have a separate license for each activity, except as provided in subsection C.

C. 1. A person who is licensed as a supplier shall not be required to obtain a separate license for any other activity for which a license is required and shall be considered to have a license as a distributor.

2. A person who is licensed as an occasional importer shall not be required to obtain a license as a distributor.

3. A person who is licensed as a distributor shall not be required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or permissive supplier. Such licensed distributor shall not be required to obtain a separate license as an exporter.

4. A person who is licensed as a distributor or a blender shall not be required to obtain a separate license as a motor fuel transporter if he does not transport motor fuel for others for hire.

5. *A person who is licensed as a distributor shall not be required to obtain a separate license as a retailer of undyed diesel fuel.*

§ 58.1-2216. Records and lists of license applicants and licensees.

A. The Commissioner shall keep a record of (i) applicants for a license under this chapter; (ii) persons to whom a license has been issued under this chapter; and (iii) persons holding a current license issued under this chapter, by license category.

B. The Commissioner shall provide a list of licensees to any licensee, as well as to any unlicensed distributor who requests a copy. The list shall state the name, ~~account number~~, and business address of each licensee on the list and may include other information determined appropriate by the Commissioner.

§ 58.1-2237. Duties of supplier as trustee.

A. All tax payments due to the Commonwealth received by a supplier pursuant to § 58.1-2231 shall be held by the supplier as trustee in trust for the Commonwealth, and a supplier has a fiduciary duty to remit to the Commissioner the amount of tax received by the supplier. A supplier shall be liable for the taxes paid to him.

B. A supplier shall notify a licensed distributor, licensed exporter, or licensed importer who received motor fuel from the supplier during a reporting period of the number of taxable gallons received. The supplier shall give this notice after the end of each reporting period and before the licensee is required to remit to the supplier the amount of tax due on the fuel.

C. A supplier of motor fuel at a terminal shall notify the Commissioner within ~~ten~~ 10 business days after a return is due of any licensed ~~distributors, licensed exporters, distributor~~ or licensed ~~importers importer~~ who did not pay the tax due the supplier when the supplier filed his return. The notice shall be transmitted to the Commissioner in the form required by the Commissioner.

D. A supplier who receives a payment of tax shall not apply the payment to a debt that the person making the payment owes the supplier for motor fuel purchased from the supplier.

§ 58.1-2266. Late filing or payment; civil penalty.

A. Any ~~licensee~~ *person* committing any of the following acts shall be subject to the civil penalty specified in subsections B and C:

1. Failure to submit a report required by this chapter on a timely basis;
2. Failure to submit the data required by this chapter; or
3. Failure to pay to the Commissioner or to a trustee on a timely basis the amount of taxes due under this chapter.

B. *The amount of the civil penalty for any act described in subdivision A 1 or 2 shall be as follows:*

1. \$50 for the first violation;
2. \$200 for the second violation;
3. \$500 for the third violation; and
4. \$1,000 for the fourth and subsequent violations.

After imposition of the penalty under this subsection, the amount of the penalty, if not paid within 30

days of receipt of notice of such penalty, shall bear interest at the rate of one percent per month until the penalty is paid.

~~B~~ C. The amount of the civil penalty for any act described in ~~subsection~~ *subdivision A 3* shall be equal to ~~ten~~ 10 percent of the tax due or ~~fifty dollars~~ \$50, whichever is greater; however, penalties resulting from an audit shall be equal to ~~ten~~ 10 percent of the tax due. After imposition of the penalty *under this subsection*, the amount of the tax and the penalty, *if not paid within 30 days of receipt of notice of such penalty*, shall bear interest at the rate of one percent per month until the tax and penalty are paid.

~~C~~ D. The Commissioner is authorized to reduce or waive any penalties under this section if the violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner.

§ 58.1-2271. Payment of civil penalties; disposition; waiver.

Any civil penalty assessed pursuant to this chapter shall be payable to the Department, shall be in addition to any other penalty or tax that may be imposed as provided in this chapter, and shall be collectible by the Commissioner in the same manner as if it were part of the tax levied. The amount of any civil penalty imposed under this chapter shall bear interest at the rate of one percent per month until paid. All civil penalties imposed under this chapter shall be deposited as provided in § 58.1-2289. *Notwithstanding any other provisions of this chapter, the Commissioner is authorized to reduce or waive any civil penalties under this chapter if the violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner.*

§ 58.1-2283. Jeopardy assessment.

If the Commissioner (i) *receives notice from a supplier pursuant to subsection C of § 58.1-2237 of any licensed distributor or licensed importer who did not pay the tax due the supplier, or* (ii) is of the opinion that the collection of any tax or any amount of tax required to be collected and paid under this chapter will be jeopardized by delay, the Commissioner shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy, including penalties and interest. In the case of a tax for a current period, the Commissioner may declare the taxable period of the taxpayer immediately terminated and shall mail or issue the notice of such finding and declaration to the taxpayer with a demand for immediate payment of the tax based on the period declared terminated, and such tax shall be immediately due and payable, ~~whether or not the time otherwise allowed by law for filing a return and paying the tax has expired~~. Assessments provided for in this section shall become immediately due and payable. If any such tax, penalty or interest is not paid upon demand, the Commissioner may proceed to (i) collect the same by legal process, including but not limited to filing a memorandum of lien pursuant to § 58.1-2284 or (ii) accept a surety bond or other security deemed to sufficiently ensure full payment of the amount of tax, penalty and interest assessed against the taxpayer.