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HOUSE BILL NO. 1641

Offered January 12, 2005

Prefiled December 17, 2004

A BILL to amend and reenact § 58.1-2259 of the Code of Virginia, relating to refunds of the motor fuels tax.

Patron—Orrock

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-2259 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-2259. Fuel uses eligible for refund.

A. A refund of the tax paid for the purchase of fuel in quantities of five gallons or more at any time shall be granted in accordance with the provisions of § 58.1-2261 to any person who establishes to the satisfaction of the Commissioner that such person has paid the tax levied pursuant to this chapter upon any fuel:

1. Sold and delivered to a governmental entity for its exclusive use;

2. Used by a governmental entity, provided persons operating under contract with a governmental entity shall not be eligible for such refund;

3. Sold and delivered to an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250 for its exclusive use in the operation of an aircraft;

4. Used by an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250 for its exclusive use in the operation of an aircraft, provided persons operating under contract with such an organization shall not be eligible for such refund;

5. Purchased by a licensed exporter and subsequently transported and delivered by such licensed exporter to another state for sales or use outside the boundaries of the Commonwealth if the tax applicable in the destination state has been paid, provided a refund shall not be granted pursuant to this section on any fuel which is transported and delivered outside of the Commonwealth in the fuel supply tank of a highway vehicle or an aircraft;

6. Used by any person performing transportation under contract or lease with any transportation district for use in a highway vehicle controlled by a transportation district created under the Transportation District Act of 1964 (§ 15.2-4500 et seq.) and used in providing transit service by the transportation district by contract or lease, provided the refund shall be paid to the person performing such transportation;

7. Used by any private, nonprofit agency on aging, designated by the Department for the Aging, providing transportation services to citizens in highway vehicles owned, operated or under contract with such agency;

8. Used in operating or propelling highway vehicles owned by a nonprofit organization that provides specialized transportation to various locations for elderly or disabled individuals to secure essential services and to participate in community life according to the individual's interest and abilities;

9. Used in operating or propelling buses owned and operated by a county or the school board thereof while being used to transport children to and from public school or from school to and from educational or athletic activities;

10. Used by buses owned or solely used by a private, nonprofit, nonsectarian school while being used to transport children to and from such school or from such school to and from educational or athletic activities;

11. Used by any county or city school board or any private, nonprofit, nonsectarian school contracting with a private carrier to transport children to and from public schools or any private, nonprofit, nonsectarian school, provided the tax shall be refunded to the private carrier performing such transportation;

12. Used in operating or propelling the equipment of volunteer firefighting companies and of volunteer rescue squads within this Commonwealth used actually and necessarily for firefighting and rescue purposes;

13. Used in operating or propelling motor equipment belonging to counties, cities and towns, if actually used in public activities;

14. Used for a purpose other than in operating or propelling highway vehicles, watercraft or aircraft;

15. Used off-highway in self-propelled equipment manufactured for a specific off-road purpose, which is used on a job site and the movement of which on any highway is incidental to the purpose for

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59 which it was designed and manufactured;

60 16. Proven to be lost by accident, including the accidental mixing of (i) dyed diesel fuel with
61 tax-paid motor fuel, (ii) gasoline with diesel fuel, or (iii) undyed diesel fuel with dyed kerosene, but
62 excluding fuel lost through personal negligence or theft;

63 17. Used in operating or propelling vehicles used solely for racing other vehicles on a racetrack;

64 18. Used in operating or propelling unlicensed highway vehicles and other unlicensed equipment
65 used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or
66 lessee of such vehicles and not operated on or over any highway for any purpose other than to move it
67 in the manner and for the purpose mentioned. The amount of refund shall be equal to the amount of the
68 taxes paid less one-half cent per gallon on such fuel so used which shall be paid by the Commissioner
69 into the state treasury to the credit of the Virginia Agricultural Foundation Fund;

70 19. Used in operating or propelling commercial watercraft. The amount of refund shall be equal to
71 the amount of the taxes paid less one and one-half cents per gallon on such fuel so used which shall be
72 paid by the Commissioner into the state treasury to be credited as provided in subsection D of
73 § 58.1-2289. If any applicant so requests, the Commissioner shall pay into the state treasury, to the
74 credit of the Game Protection Fund, the entire tax paid by such applicant for the purposes specified in
75 subsection D of § 58.1-2289. If any applicant who is an operator of commercial watercraft so requests,
76 the Commissioner shall pay into the state treasury, to the credit of the Marine Fishing Improvement
77 Fund, the entire tax paid by such applicant for the purposes specified in § 28.2-208;

78 20. Used in operating stationary engines, or pumping or mixing equipment on a highway vehicle if
79 the fuel used to operate such equipment is stored in an auxiliary tank separate from the fuel tank used to
80 propel the highway vehicle, and the highway vehicle is mechanically incapable of self-propulsion while
81 fuel is being used from the auxiliary tank; or

82 21. Used in operating or propelling recreational and pleasure watercraft.

83 B. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete
84 highway vehicle, or a bulk feed delivery truck, where the vehicle's equipment is mechanically or
85 hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in
86 an amount equal to 35 percent of the tax paid on such fuel. For purposes of this section, a "bulk feed
87 delivery truck" means bulk animal feed delivery trucks utilizing power take-off (PTO) driven auger or
88 air feed discharge systems for off-road deliveries of animal feed.

89 C. Any person purchasing any fuel on which tax imposed pursuant to this chapter has been paid may
90 apply for a refund of the tax if such fuel was consumed by a highway vehicle used in operating an
91 urban or suburban bus line or a taxicab service. This refund also applies to a common carrier of
92 passengers which has been issued a certificate of public convenience and necessity pursuant to
93 §§ 46.2-2005 and 58.1-2204 providing regular route service over the highways of the Commonwealth.
94 No refund shall be granted unless the majority of the passengers using such bus line, taxicab service or
95 common carrier of passengers do so for travel of a distance of not more than 40 miles, one way, in a
96 single day between their place of abode and their place of employment, shopping areas or schools.

97 If the applicant for a refund is a taxicab service, he shall hold a valid permit from the Department to
98 engage in the business of a taxicab service. No applicant shall be denied a refund by reason of the fee
99 arrangement between the holder of the permit and the driver or drivers, if all other conditions of this
100 section have been met.

101 Under no circumstances shall a refund be granted more than once for the same fuel. The amount of
102 refund under this subsection shall be equal to the amount of the taxes paid, except refunds granted on
103 the tax paid on fuel used by a taxicab service shall be in an amount equal to the tax paid less one cent
104 per gallon on the fuel used.

105 Any refunds made under this subsection shall be deducted from the urban highway funds allocated to
106 the highway construction district, pursuant to Article 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title
107 33.1, in which the recipient has its principal place of business.

108 Except as otherwise provided in this chapter, all provisions of law applicable to the refund of fuel
109 taxes by the Commissioner generally shall apply to the refunds authorized by this subsection. Any
110 county having withdrawn its roads from the secondary system of state highways under provisions of
111 § 11 Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is
112 now provided by law with respect to other fuel tax receipts.

113 D. *Any person purchasing fuel for consumption in a vehicle designed or adapted solely and*
114 *exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer,*
115 *where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine*
116 *that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such*
117 *fuel.*

118 E. Refunds resulting from any fuel shipments diverted from Virginia shall be based on the amount of
119 tax paid for the fuel less discounts allowed by § 58.1-2233.

120 EF. Any person who is required to be licensed under this chapter and is applying for a refund shall

121 not be eligible for such refund if the applicant was not licensed at the time the refundable transaction
122 was conducted.