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SENATE BILL NO. 678

Offered January 20, 2006

A *BILL to amend and reenact §§ 58.1-2259 and 58.1-2289 of the Code of Virginia, relating to refunds of fuels taxes.*

Patron—Hanger

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-2259 and 58.1-2289 of the Code of Virginia are 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, nonreligious 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, nonreligious school contracting with a private carrier to transport children to and from public schools or any private, nonprofit, nonreligious 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 the 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 which it was designed and manufactured;

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

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

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

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

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

81 ~~21. Used in operating or propelling recreational and pleasure watercraft.~~

82 B. 1. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete
83 highway vehicle, or a bulk feed delivery truck, where the vehicle's equipment is mechanically or
84 hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in
85 an amount equal to 35 percent of the tax paid on such fuel. For purposes of this section, a "bulk feed
86 delivery truck" means bulk animal feed delivery trucks utilizing power take-off (PTO) driven auger or
87 air feed discharge systems for off-road deliveries of animal feed.

88 2. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely
89 and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer,
90 where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine
91 that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such
92 fuel.

93 C. Any person purchasing any fuel on which tax imposed pursuant to this chapter has been paid may
94 apply for a refund of the tax if such fuel was consumed by a highway vehicle used in operating an
95 urban or suburban bus line or a taxicab service. This refund also applies to a common carrier of
96 passengers which has been issued a certificate of public convenience and necessity pursuant to
97 §§ 46.2-2005 and 58.1-2204 providing regular route service over the highways of the Commonwealth.
98 No refund shall be granted unless the majority of the passengers using such bus line, taxicab service or
99 common carrier of passengers do so for travel of a distance of not more than 40 miles, one way, in a
100 single day between their place of abode and their place of employment, shopping areas or schools.

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

105 Under no circumstances shall a refund be granted more than once for the same fuel. The amount of
106 refund under this subsection shall be equal to the amount of the taxes paid, except refunds granted on
107 the tax paid on fuel used by a taxicab service shall be in an amount equal to the tax paid less \$0.01 per
108 gallon on the fuel used.

109 Any refunds made under this subsection shall be deducted from the urban highway funds allocated to
110 the highway construction district, pursuant to Article 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title
111 33.1, in which the recipient has its principal place of business.

112 Except as otherwise provided in this chapter, all provisions of law applicable to the refund of fuel
113 taxes by the Commissioner generally shall apply to the refunds authorized by this subsection. Any
114 county having withdrawn its roads from the secondary system of state highways under provisions of
115 § 11 Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is
116 now provided by law with respect to other fuel tax receipts.

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

121 fuel.

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

124 F. Any person who is required to be licensed under this chapter and is applying for a refund shall
125 not be eligible for such refund if the applicant was not licensed at the time the refundable transaction
126 was conducted.

127 § 58.1-2289. Disposition of tax revenue generally.

128 A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by
129 the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be
130 promptly paid into the state treasury and shall constitute special funds within the Commonwealth
131 Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for
132 use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds
133 shall accrue to these funds. Except as provided in § 33.1-23.03:1, no portion of the revenue derived
134 from taxes collected pursuant to §§ 58.1-2217, 58.1-2249 or § 58.1-2701, and remaining after authorized
135 refunds for nonhighway use of fuel, shall be used for any purpose other than the construction,
136 reconstruction or maintenance of the roads and projects comprising the State Highway System, the
137 Interstate System and the secondary system of state highways and expenditures directly and necessarily
138 required for such purposes, including the retirement of revenue bonds.

139 Revenues collected under this chapter may be also used for (i) contributions toward the construction,
140 reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law
141 and (ii) expenditures for the operation and maintenance of the Department of Transportation, the
142 Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority,
143 and the Department of Motor Vehicles as may be provided by law.

144 The Governor is hereby authorized to transfer out of such fund an amount necessary for the
145 inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection
146 and analysis of gasoline for purity.

147 B. The tax collected on each gallon of aviation fuel sold and delivered or used in this
148 Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this
149 special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the
150 Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the
151 laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of
152 airports and landing fields to which the public now has or which it is proposed shall have access, and
153 for the promotion of aviation in the interest of operators and the public generally.

154 C. One-half cent of the tax collected on each gallon of fuel on which the refund has been paid at the
155 rate of seventeen cents per gallon, or in the case of diesel fuel, fifteen and one-half cents per gallon, for
156 fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a
157 special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed
158 to make certain refunds and defray the costs of the research and educational phases of the agricultural
159 program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute
160 and State University, the Department of Agriculture and Consumer Services and the Virginia Truck and
161 Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.

162 D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial
163 watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of
164 the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the
165 purposes provided generally in subsection C of § 29.1-701, including acquisition, construction,
166 improvement and maintenance of public boating access areas on the public waters of this
167 Commonwealth and for other activities and purposes of direct benefit and interest to the boating public
168 and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial
169 fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be
170 used for the construction, repair, improvement and maintenance of the public docks of this
171 Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction,
172 improvement and maintenance of the public docks shall be made according to a plan developed by the
173 Virginia Marine Resources Commission.

174 From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for
175 the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury
176 for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the
177 State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public
178 docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters,
179 (iii) make environmental improvements including, without limitation, fisheries management and habitat
180 enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § 33.1-223,
181 a sum as established by the General Assembly.

182 *An amount equivalent to the revenue attributable to the repeal of provisions under this chapter that*
183 *provided for refunds of tax paid upon any fuel used in operating or propelling any recreational or*
184 *pleasure watercraft, pursuant to enactments of the 2006 Session of the General Assembly, shall be*
185 *deposited by the Comptroller into the Game Protection Fund of the state treasury to be made available*
186 *to the Board of Game and Inland Fisheries. The Commissioner shall determine the amount of such*
187 *revenue for the 2006-2007 fiscal year and shall report the same to the Comptroller by September 1,*
188 *2007. The amount reported by the Commissioner shall be deposited by the Comptroller into the Game*
189 *Protection Fund no later than June 30, 2008. Such amount shall also be deposited into the Game*
190 *Protection Fund for the 2008-2009 fiscal year and for each fiscal year thereafter no later than the last*
191 *day of the fiscal year. Such moneys deposited into the Game Protection Fund shall be used exclusively*
192 *for activities and purposes of direct benefit to the boating public, including but not limited to law*
193 *enforcement.*

194 E. Notwithstanding other provisions of this section, there shall be transferred from moneys collected
195 pursuant to this section to a special fund within the Commonwealth Transportation Fund in the state
196 treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, an amount
197 equal to one percent of a sum to be calculated as follows: the tax revenues collected pursuant to this
198 chapter, at the tax rates in effect on December 31, 1986, less refunds authorized by this chapter and less
199 taxes collected for aviation fuels.