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**HOUSE BILL NO. 275**

Offered January 9, 2008

Prefiled January 2, 2008

A *BILL to amend and reenact §§ 58.1-2217, 58.1-2249, 58.1-2289, as it may become effective, 58.1-2701, as it is currently effective and as it may become effective, and 58.1-2706 of the Code of Virginia, relating to motor fuel tax rates.*

Patron—Watts

Referred to Committee on Rules

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-2217, 58.1-2249, 58.1-2289, as it may become effective, 58.1-2701, as it is currently effective and as it may become effective, and 58.1-2706 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-2217. Taxes levied; rate.

A. There is hereby levied a tax at the rate of ~~seventeen and one-half cents~~ \$0.275 per gallon on gasoline and gasohol.

B. (Contingent expiration date - see Editor's notes) There is hereby levied a tax at the rate of ~~seventeen and one-half cents~~ \$0.275 per gallon on diesel fuel.

B. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of ~~sixteen cents~~ \$0.26 per gallon on diesel fuel.

C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that contains diesel fuel shall be taxed at the rate levied on diesel fuel.

D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation gasoline shall be liable for the tax at the rate of seventeen and one-half cents per gallon, along with any penalties and interest that may accrue.

E. (Contingent expiration date - see Editor's notes) There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of ~~seventeen and one-half cents~~ \$0.275 per gallon, along with any penalties and interest that may accrue.

E. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of ~~sixteen cents~~ \$0.26 per gallon, along with any penalties and interest that may accrue.

F. In accordance with § 62.1-44.34:13, a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth.

G. *Beginning on July 1, 2009, the amount of tax imposed on each gallon of gasoline, aviation gasoline, diesel fuel, blended fuel that contains gasoline or diesel fuel, and aviation jet fuel used in highway vehicles shall be indexed every two years by an amount equal to the percentage change in the U.S. Department of Labor's Producer Price Index for Highway and Street Construction from October 1 through September 30 of the year immediately preceding the affected year.*

§ 58.1-2249. Tax on alternative fuel.

A. (Contingent expiration date - see Editor's notes) There is hereby levied a tax at the rate of ~~seventeen and one-half cents~~ \$0.275 per gallon on liquid alternative fuel used to operate a highway

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59 vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to  
60 operate the vehicle. There is hereby levied a tax at a rate equivalent to ~~seventeen and one-half cents~~  
61 \$0.275 per gallon on all other alternative fuel used to operate a highway vehicle. The Commissioner  
62 shall determine the equivalent rate applicable to such other alternative fuels. *Beginning on July 1, 2009,*  
63 *the amount of tax imposed pursuant to this section on alternative fuel shall be indexed every two years*  
64 *by an amount equal to the percentage change in the U.S. Department of Labor's Producer Price Index*  
65 *for Highway and Street Construction from October 1 through September 30 of the year immediately*  
66 *preceding the affected year.*

67 A. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of ~~sixteen~~  
68 ~~cents~~ \$0.26 per gallon on liquid alternative fuel used to operate a highway vehicle by means of a  
69 vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There  
70 is hereby levied a tax at a rate equivalent to ~~sixteen cents~~ \$0.26 per gallon on all other alternative fuel  
71 used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to  
72 such other alternative fuels. *Beginning on July 1, 2009, the amount of tax imposed pursuant to this*  
73 *section on alternative fuel shall be indexed every two years by an amount equal to the percentage*  
74 *change in the U.S. Department of Labor's Producer Price Index for Highway and Street Construction*  
75 *from October 1 through September 30 of the year immediately preceding the affected year.*

76 B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of fifty  
77 dollars per vehicle on each highway vehicle that is fueled from a private source if the alternative fuels  
78 tax levied under this article has not been paid on fuel used in the vehicle. If such a highway vehicle is  
79 not in operation by January 1 of any year, the license tax shall be reduced by one-twelfth for each  
80 complete month which shall have elapsed since the beginning of such year.

81 § 58.1-2289. (Contingent effective date - see Editor's notes) Disposition of tax revenue generally.

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

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

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

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

108 C. One-half cent of the tax collected on each gallon of fuel on which the refund has been paid at the  
109 rate of ~~seventeen cents~~ \$0.27 per gallon, or in the case of diesel fuel, ~~fifteen and one-half cents~~ \$0.255  
110 per gallon, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall  
111 be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to  
112 be disbursed to make certain refunds and defray the costs of the research and educational phases of the  
113 agricultural program, including supplemental salary payments to certain employees at Virginia  
114 Polytechnic Institute and State University, the Department of Agriculture and Consumer Services and the  
115 Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia  
116 Agricultural Council.

117 D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial  
118 watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of  
119 the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the  
120 purposes provided generally in subsection C of § 29.1-701, including acquisition, construction,

improvement and maintenance of public boating access areas on the public waters of this Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, ~~one and one-half cents~~ \$0.015 per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of ~~this~~ the Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

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

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

§ 58.1-2701. (Contingent expiration date - see Editor's notes) Amount of tax.

A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to ~~\$0.21~~ \$0.31 per gallon calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~ 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within the Commonwealth. *Beginning on July 1, 2009, the amount of tax imposed pursuant to this section on every motor carrier shall be indexed every two years by an amount equal to the percentage change in the U.S. Department of Labor's Producer Price Index for Highway and Street Construction from October 1 through September 30 of the year immediately preceding the affected year.*

The tax imposed by this chapter shall be in addition to all other taxes of whatever character imposed on a motor carrier by any other provision of law.

B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles that are not registered under the International Registration Plan shall pay a fee of \$150 per year for each qualified highway vehicle. The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the registration fee paid is authorized by law.

C. All taxes and fees paid under the provisions of this chapter shall be credited to the Highway Maintenance and Operating Fund, a special fund within the Commonwealth Transportation Fund.

§ 58.1-2701. (Contingent effective date - see Editor's notes) Amount of tax.

A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to ~~nineteen and one-half cents~~ \$0.295 per gallon calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~ 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within the Commonwealth. *Beginning on July 1, 2009, the amount of tax imposed pursuant to this section on every motor carrier shall be indexed every two years by an amount equal to the percentage change in the U.S. Department of Labor's Producer Price Index for Highway and Street Construction from October 1 through September 30 of the year immediately preceding the affected year.*

The tax imposed by this chapter shall be in addition to all other taxes of whatever character imposed on a motor carrier by any other provision of law.

B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles that are not registered under the International Registration Plan shall pay a fee of \$100 per year for each qualified highway vehicle. The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the

182 registration fee paid is authorized by law.

183 C. All taxes and fees paid under the provisions of this chapter shall be credited to the Highway  
184 Maintenance and Operating Fund, a special fund within the Commonwealth Transportation Fund.

185 § 58.1-2706. Credit for payment of motor fuel, diesel fuel or liquefied gases tax.

186 A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax equivalent to  
187 ~~seventeen and one-half cents~~ \$0.275 per gallon on all motor fuel, diesel fuel and liquefied gases  
188 purchased by such carrier within the Commonwealth for use in its operations either within or without  
189 the Commonwealth and upon which the motor fuel, diesel fuel or liquefied gases tax imposed by the  
190 laws of the Commonwealth has been paid by such carrier. Evidence of the payment of such tax in such  
191 form as may be required by, or is satisfactory to, the Department shall be furnished by each carrier  
192 claiming the credit herein allowed. *Beginning on July 1, 2009, the amount of tax imposed pursuant to*  
193 *this section on every motor carrier shall be indexed every two years by an amount equal to the*  
194 *percentage change in the U.S. Department of Labor's Producer Price Index for Highway and Street*  
195 *Construction from October 1 through September 30 of the year immediately preceding the affected year.*

196 B. When the amount of the credit to which any motor carrier is entitled for any quarter exceeds the  
197 amount of the tax for which such carrier is liable for the same quarter, the excess may: (i) be allowed as  
198 a credit on the tax for which such carrier would be otherwise liable for any of the eight succeeding  
199 quarters or (ii) be refunded, upon application, duly verified and presented and supported by such  
200 evidence as may be satisfactory to the Department.

201 C. The Department may allow a refund upon receipt of proper application and review. It shall be at  
202 the discretion of the Department to determine whether an audit is required.

203 D. The refund may be allowed without a formal hearing if the amount of refund is agreed to by the  
204 applicant. Otherwise, a formal hearing on the application shall be held by the Department after notice of  
205 not less than ~~ten~~ 10 days to the applicant and the Attorney General.

206 E. Whenever any refund is ordered it shall be paid out of the Highway Maintenance and  
207 Construction Fund.

208 F. Whenever a person operating under lease to a motor carrier to perform transport services on  
209 behalf of the carrier purchases motor fuel, diesel fuel or liquefied gases relating to such services, such  
210 payments or purchases may, at the discretion of the Department, be considered payment or purchases by  
211 the carrier.