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HOUSE BILL NO. 2194

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact §§ 33.1-23.2, 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 fuels tax and allocation of construction funds for state primary highway system.

Patrons—Watts; Senator: Ticer

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-23.2, 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:

§ 33.1-23.2. Allocation of construction funds for primary system and interstate match.

A. The Commonwealth Transportation Board shall allocate such funds as are available under subdivision B 1 of § 33.1-23.1 ~~B 1~~ to the primary system of state highways, including the arterial network, for construction and shall apportion such funds among the nine construction districts so that each construction district shall be allocated a share of such funds equal to the proportion that such construction district bears to the Commonwealth as a whole in terms of: ~~the ratio of vehicle-miles traveled on the primary system, divided by the primary road lane mileage in each construction district, weighted 90 percent,~~ and a primary road need factor, which adjusts the weights in the allocation formula for the construction district with the largest under-allocation relative to primary needs, ~~with vehicle-miles traveled weighted seventy percent, primary road lane mileage weighted twenty-five percent, and the primary road need factor weighted five percent weighted 10 percent.~~

B. Out of each district's total allocation of primary funds pursuant to ~~paragraph 1 of subsection~~ subdivision B 1 of § 33.1-23.1, the Board shall allocate all needed interstate federal-aid matching funds, up to a maximum of twenty-five percent of the district's primary allocation. Any additional interstate federal-aid matching funds needed in a district shall be allocated by the Board from the Interstate Federal-Aid Matching Fund established in § 33.1-23.1:2.

C. Notwithstanding subsection A of this section, the Board may provide for exceptionally heavy expenditures for repairs or replacements made necessary by highway damage resulting from accidents, severe weather conditions, acts of God or vandalism.

D. Notwithstanding subsection A, the Board may, from funds available under subdivision B 1 of § 33.1-23.1, provide funding for the construction of highway projects maintained or to be maintained by a municipality, provided such project involves a component of the National Highway System and such funds are derived from allocations to the highway construction district in which such project is located. Any allocation under this subsection shall not diminish funds allocated or allocable to any such municipality under § 33.1-23.3.

E. Such funds allocated to the primary system shall, as far as possible, be allotted prior to the commencement of the fiscal year and public announcement made of such allotment but the Board shall not approve such allotment until after a public hearing at which political subdivisions of the Commonwealth and interested citizens may be heard.

In any case where any allotment of funds is made under this subsection to any county, all or a part of which subsequently is incorporated as or into a city or town, such allocation shall not be impaired thereby and the funds so allocated shall be expended as if such county or any part thereof had never become an incorporated city, but that portion of such city shall not be eligible to receive funds as a city during the same year it receives the funds allocated as a county or as any part of a county.

§ 58.1-2217. Taxes levied; rate.

A. There is hereby levied a tax at the rate of ~~seventeen~~ twenty-seven and one-half cents per gallon on gasoline and gasohol. Beginning August 1, 2009, and for each month thereafter, the rate shall decrease by one cent for each twenty cents that the statewide average retail price of a gallon of self-serve unleaded regular gasoline exceeds \$3.00 in the preceding month, as determined by the Tax Commissioner Beginning July 1, 2010, the rate 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.

B. (Contingent expiration date - see Editor's notes) There is hereby levied a tax on each gallon of

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59 *diesel fuel at the same rate of seventeen and one-half cents per gallon on diesel fuel as the rate in effect*
60 *pursuant to subsection A.*

61 B. (Contingent effective date - see Editor's notes) There is hereby levied a tax *on each gallon of*
62 *diesel fuel at the rate of sixteen cents one cent per gallon less than the rate in effect in subsection A on*
63 *diesel fuel.*

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

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

70 E. (Contingent expiration date - see Editor's notes) There is hereby levied a tax at the rate of five
71 cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than
72 an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first
73 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by
74 any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per
75 gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an
76 aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed
77 under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation
78 jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of seventeen and
79 one-half cents per gallon, along with any penalties and interest that may accrue.

80 F. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of five
81 cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than
82 an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first
83 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by
84 any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per
85 gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an
86 aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed
87 under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation
88 jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of sixteen cents per
89 gallon, along with any penalties and interest that may accrue.

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

93 § 58.1-2249. Tax on alternative fuel.

94 A. (Contingent expiration date - see Editor's notes) There is hereby levied a tax at the rate of
95 ~~seventeen and one-half cents per gallon~~ *in effect under subsection A of § 58.1-2217* on each gallon of
96 liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores
97 fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied a tax at a rate
98 equivalent to ~~seventeen and one-half cents per gallon~~ *the rate in effect pursuant to subsection A of*
99 *§ 58.1-2217* on each gallon of all other alternative fuel used to operate a highway vehicle. The
100 Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

101 A. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of ~~sixteen~~
102 ~~cents one cent less than the rate in effect pursuant to subsection A of § 58.1-2217~~ *per gallon* on each
103 gallon liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that
104 stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied a tax at
105 a rate equivalent to ~~sixteen cents per gallon~~ *one cent less than the rate in effect pursuant to subsection*
106 *A of § 58.1-2217* on each gallon of all other alternative fuel used to operate a highway vehicle. The
107 Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

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

113 § 58.1-2289. (Contingent effective date - see Editor's notes) Disposition of tax revenue generally.

114 A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by
115 the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be
116 promptly paid into the state treasury and shall constitute special funds within the Commonwealth
117 Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for
118 use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds
119 shall accrue to these funds. Except as provided in § 33.1-23.03:1, no portion of the revenue derived
120 from taxes collected pursuant to §§ 58.1-2217, 58.1-2249 or § 58.1-2701, and remaining after authorized

refunds for nonhighway use of fuel, shall be used for any purpose other than the construction, reconstruction or maintenance of the roads and projects comprising the State Highway System, the Interstate System and the secondary system of state highways and expenditures directly and necessarily required for such purposes, including the retirement of revenue bonds.

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

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

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

C. One-half cent of the tax collected on each gallon of fuel on which the refund has been paid at the ~~rate of seventeen cents per gallon, or in the case of diesel fuel, fifteen and one-half cents per gallon~~ *rate in effect pursuant to subsection A of § 58.1-2217*; for each gallon of fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the 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 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 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 three and one-half cents more per gallon than the rate in effect pursuant to subsection A of § 58.1-2217~~, calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within the Commonwealth.

The tax imposed by this chapter shall be in addition to all other taxes of whatever character imposed

182 on a motor carrier by any other provision of law.

183 B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles
184 that are not registered under the International Registration Plan shall pay a fee of ~~\$150~~\$225 per year for
185 each qualified highway vehicle. The fee is due and payable when the vehicle registration fees are paid
186 pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

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

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

193 § 58.1-2701. (Contingent effective date - see Editor's notes) Amount of tax.

194 A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to
195 ~~nineteen and one-half cents~~ *two cents more per gallon than the rate in effect pursuant to subsection A of*
196 *§ 58.1-2217*, calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not
197 exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of 14.7 pounds per square
198 inch absolute), used in its operations within the Commonwealth.

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

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

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

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

211 § 58.1-2706. Credit for payment of motor fuel, diesel fuel or liquefied gases tax.

212 A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax equivalent to
213 ~~seventeen and one-half cents the per gallon rate in effect pursuant to subsection A of § 58.1-2217 on~~
214 *each gallon of* all motor fuel, diesel fuel and liquefied gases purchased by such carrier within the
215 Commonwealth for use in its operations either within or without the Commonwealth and upon which the
216 motor fuel, diesel fuel or liquefied gases tax imposed by the laws of the Commonwealth has been paid
217 by such carrier. Evidence of the payment of such tax in such form as may be required by, or is
218 satisfactory to, the Department shall be furnished by each carrier claiming the credit herein allowed.

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

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

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

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

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