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SENATE BILL NO. 1041

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact §§ 58.1-2217, 58.1-2249, 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 annually adjusting Virginia's fuels taxes by changes in the average fuel economy of motor vehicles.

Patron—Hanger

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2217, 58.1-2249, 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 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 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 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 on a per-gallon basis at the same rate as the tax levied on gasoline, 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 per gallon on a per-gallon basis at the same rate as the tax levied on diesel fuel, 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 per gallon on a per-gallon basis at the same rate as the tax levied on diesel fuel, along with any penalties and interest that may accrue.

F. The rate of tax on gasoline, gasohol, and diesel fuel under subsections A and B shall be adjusted annually using the actual Corporate Average Fuel Economy (sales volume weighted), Total Fleet (the CAFE), as published by the National Highway Safety Traffic Administration. The rate of tax on such fuels shall be adjusted each year on April 1, beginning with April 1, 2010. Once the adjusted rate of tax is computed, the adjusted rate of tax for such fuels shall be imposed for the period April 1 through the following March 31, inclusive, in lieu of the rate of tax on gasoline, gasohol, and diesel fuel provided under subsections A and B.

The Commissioner shall compute the adjusted rate of tax on gasoline, gasohol, and diesel fuels on a per-gallon basis rounded to the nearest one-tenth of one cent. The adjusted rate of tax for each such

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59 *fuel each year shall be the product of (i) the rate of tax for such fuel pursuant to subsections A and B,*
 60 *and (ii) the sum of 1 + the percentage by which the CAFE in the immediately preceding calendar year*
 61 *exceeds the CAFE for calendar year 2008.*

62 *In no case shall the rate of tax on such fuels on April 1 of any calendar year be less than the rate*
 63 *of tax on such fuels on April 1 of the immediately preceding calendar year.*

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

67 § 58.1-2249. Tax on alternative fuel.

68 A. (Contingent expiration date - see Editor's notes) There is hereby levied a tax ~~at the rate of~~
 69 ~~seventeen and one-half cents per gallon on a per-gallon basis at the same rate as the tax levied on~~
 70 ~~gasoline under § 58.1-2217~~ on liquid alternative fuel used to operate a highway vehicle by means of a
 71 vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There
 72 is hereby levied a tax ~~at a rate equivalent to seventeen and one-half cents per gallon on a per-gallon~~
 73 ~~basis at the same rate as the tax levied on gasoline under § 58.1-2217~~ on all other alternative fuel used
 74 to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such
 75 other alternative fuels.

76 A. (Contingent effective date - see Editor's notes) There is hereby levied a tax ~~at the rate of sixteen~~
 77 ~~cents per gallon on a per-gallon basis at the same rate as the tax levied on diesel fuel under~~
 78 ~~§ 58.1-2217~~ on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply
 79 tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied
 80 a tax ~~at a rate equivalent to sixteen cents per gallon on a per-gallon basis at the same rate as the tax~~
 81 ~~levied on diesel fuel under § 58.1-2217~~ on all other alternative fuel used to operate a highway vehicle.
 82 The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

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

88 § 58.1-2701. (Contingent expiration date - see Editor's notes) Amount of tax.

89 A. Except as provided in subsection B, every motor carrier shall pay a road tax *at a rate per gallon*
 90 *equivalent to ~~\$0.21~~ three and one-half cents per gallon greater than the total tax imposed on each*
 91 *gallon of diesel fuel under § 58.1-2217* calculated on the amount of motor fuel, diesel fuel or liquefied
 92 gases (which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of
 93 14.7 pounds per square inch absolute), used in its operations within the Commonwealth.

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

96 B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles
 97 that are not registered under the International Registration Plan shall pay a fee of ~~\$150~~ \$175 per year
 98 for each qualified highway vehicle. The fee is due and payable when the vehicle registration fees are
 99 paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

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

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

106 § 58.1-2701. (Contingent effective date - see Editor's notes) Amount of tax.

107 A. Except as provided in subsection B, every motor carrier shall pay a road tax *at a rate per gallon*
 108 *equivalent to ~~nineteen and one-half~~ three and one-half cents per gallon greater than the total tax*
 109 *imposed on each gallon of diesel fuel under § 58.1-2217* calculated on the amount of motor fuel, diesel
 110 fuel or liquefied gases (which would not exist as liquids at a temperature of sixty degrees Fahrenheit
 111 and a pressure of 14.7 pounds per square inch absolute), used in its operations within the
 112 Commonwealth.

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

115 B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles
 116 that are not registered under the International Registration Plan shall pay a fee of ~~\$100~~ \$125 per year
 117 for each qualified highway vehicle. The fee is due and payable when the vehicle registration fees are
 118 paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

119 If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due
 120 at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration

121 expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the
122 registration fee paid is authorized by law.

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

125 § 58.1-2706. Credit for payment of motor fuel, diesel fuel or liquefied gases tax.

126 A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax *at a rate per*
127 *gallon equivalent to ~~seventeen and one-half cents per gallon~~ the total tax imposed on each gallon of*
128 *diesel fuel under § 58.1-2217* on all motor fuel, diesel fuel and liquefied gases purchased by such carrier
129 within the Commonwealth for use in its operations either within or without the Commonwealth and
130 upon which the motor fuel, diesel fuel or liquefied gases tax imposed by the laws of the Commonwealth
131 has been paid by such carrier. Evidence of the payment of such tax in such form as may be required by,
132 or is satisfactory to, the Department shall be furnished by each carrier claiming the credit herein
133 allowed.

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

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

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

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

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

150 **2. That the Commissioner of the Department of Motor Vehicles shall develop and issue guidelines**
151 **no later than September 1, 2009, for purposes of developing processes and procedures**
152 **implementing the provisions of this act. The development and issuance of the guidelines shall be**
153 **exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of**
154 **Virginia).**

155 **3. That the Commissioner of the Department of Motor Vehicles shall periodically publish the rates**
156 **of taxes on fuels taxable under Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1 of the Code of**
157 **Virginia for purposes of identifying the rates of taxes currently in effect under §§ 58.1-2217 and**
158 **58.1-2249 of the Code of Virginia.**