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SENATE BILL NO. 1283

Offered January 14, 2009

Prefiled January 14, 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 the fuels tax.*

Patron—Newman

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. 1. Notwithstanding any other provision of law, if the Commissioner determines at any time that the statewide weekly average wholesale price of a gallon of self-serve unleaded regular gasoline, excluding federal and state excise taxes, is less than \$0.99 per gallon, then (i) the tax on gasoline and gasohol shall be levied at the rate provided under this subsection beginning on the date as determined under subdivision 4 (and thereafter), and not at the rate provided under subsection A, and (ii) the tax on diesel fuel shall be levied at the rate provided under this subsection beginning on the date as determined under subdivision 4 (and thereafter), and not at the rate provided under subsection B.

For purposes of making such determination, the Commissioner shall, on a weekly basis, compute the statewide weekly average wholesale price of a gallon of self-serve unleaded regular gasoline, excluding federal and state excise taxes.

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59 2. If the Commissioner makes the determination described in subdivision 1, the tax on gasoline and
60 gasohol shall be levied on a per gallon basis at the rate of (i) the cents-per-gallon rate provided under
61 subsection A less \$0.05 per gallon, plus (ii) an additional cents-per-gallon rate that is equal to five
62 percent of the statewide average wholesale price of a gallon of self-serve unleaded regular gasoline as
63 computed in subdivision 3. If such determination is made, the tax on diesel fuel shall be levied on a per
64 gallon basis at the rate of (a) the cents-per-gallon rate provided under subsection B less \$0.05 per
65 gallon, plus (b) an additional cents-per-gallon rate that is equal to five percent of the statewide average
66 wholesale price of a gallon of self-serve unleaded regular gasoline as computed in subdivision 3.

67 3. The \$0.05 per gallon reduction in the rate of tax levied on gasoline, gasohol, and diesel fuel shall
68 be replaced by an additional cents-per-gallon tax equal to five percent of the statewide average
69 wholesale price of a gallon of self-serve unleaded regular gasoline for the applicable base period,
70 excluding federal and state excise taxes, as determined by the Commissioner rounded up to the nearest
71 one-tenth of one cent.

72 In computing the additional cents-per-gallon tax described under this subdivision, the Commissioner
73 shall use four base periods. The period from July 1 through September 30 shall be the base period for
74 purposes of determining the additional cents-per-gallon tax to be imposed for the immediately following
75 period beginning January 1 and ending March 31, inclusive; the period from October 1 through
76 December 31 shall be the base period for purposes of determining the additional cents-per-gallon tax to
77 be imposed for the immediately following period beginning April 1 and ending June 30, inclusive; the
78 period from January 1 through March 31 shall be the base period for purposes of determining the
79 additional cents-per-gallon tax to be imposed for the immediately following period beginning July 1 and
80 ending September 30, inclusive; and the period from April 1 through June 30 shall be the base period
81 for purposes of determining the additional cents-per-gallon tax to be imposed for the immediately
82 following period beginning October 1 and ending December 31, inclusive.

83 4. The rate of tax under this subsection on gasoline and gasohol and the rate of tax under this
84 subsection on diesel fuel shall first be imposed on the January 1st, April 1st, July 1st, or October 1st
85 immediately following the month of the Commissioner's determination with an intervening period of at
86 least five months.

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

90 § 58.1-2249. Tax on alternative fuel.

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

99 A. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of ~~sixteen~~
100 ~~cents per gallon on a per gallon basis at the same rate as the tax levied on diesel fuel under~~
101 ~~§ 58.1-2217~~ on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply
102 tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied
103 a tax at a rate equivalent to ~~sixteen cents per gallon on a per gallon basis at the same rate as the tax~~
104 ~~levied on diesel fuel under § 58.1-2217~~ on all other alternative fuel used to operate a highway vehicle.
105 The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

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

111 § 58.1-2701. (Contingent expiration date - see Editor's notes) Amount of tax.

112 A. Except as provided in subsection B, every motor carrier shall pay a road tax at a rate per gallon
113 equivalent to ~~\$0.21~~ ~~three and one-half cents per gallon greater than the total tax imposed on each~~
114 ~~gallon of diesel fuel under § 58.1-2217~~ calculated on the amount of motor fuel, diesel fuel or liquefied
115 gases (which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of
116 14.7 pounds per square inch absolute), used in its operations within the Commonwealth.

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

119 B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles
120 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 *at a rate per gallon equivalent to ~~nineteen and one-half~~ three and one-half cents per gallon greater than the total tax imposed on each gallon of diesel fuel under § 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 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 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.

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

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

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

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

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

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

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

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

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