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## SENATE BILL NO. 343

Offered January 13, 2010

Prefiled January 12, 2010

*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.*

Patrons—Hanger and Petersen

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~~ 17 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~~ 17 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~~ 16 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 rates of taxes 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 rates of taxes on such fuels shall be adjusted each year on April 1, beginning with April 1, 2011. Once the adjusted rates of taxes are computed, then the adjusted rate of tax for each such fuel shall be imposed for the period April 1 through the following March 31, inclusive, in lieu of the rate of tax for gasoline, gasohol, and diesel fuel provided under subsection A or B, as applicable.*

*The Commissioner shall compute the adjusted rate of tax for gasoline, gasohol, and diesel fuel 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 subsection A or B, as*  
60 *applicable, and (ii) the sum of 1 + the percentage by which the CAFE in the immediately preceding*  
61 *calendar year exceeds the CAFE for calendar year 2009.*

62 *In no case shall the rate of tax for each such fuel on April 1 of any calendar year be less than the*  
63 *rate of tax for each such fuel 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~~ \$50 per vehicle on each highway vehicle that is fueled from a private source if the alternative  
85 fuels tax levied under this article has not been paid on fuel used in the vehicle. If such a highway  
86 vehicle is not in operation by January 1 of any year, the license tax shall be reduced by one-twelfth  
87 each 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 per-gallon rate~~  
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 (excluding subsection G of such section)~~ calculated on the  
92 amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature  
93 of ~~sixty~~ 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its  
94 operations within the Commonwealth.

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

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

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

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

107 § 58.1-2701. (Contingent effective date - see Editor's notes) Amount of tax.

108 A. Except as provided in subsection B, every motor carrier shall pay a road tax ~~at a per-gallon rate~~  
109 ~~equivalent to nineteen three and one-half cents per gallon greater than the tax imposed on each gallon~~  
110 ~~of diesel fuel under § 58.1-2217 (excluding subsection G of such section)~~ calculated on the amount of  
111 motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~ 60  
112 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within  
113 the Commonwealth.

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

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

120 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 per-gallon rate equivalent to seventeen and one-half cents per gallon the tax imposed on each gallon of diesel fuel under § 58.1-2217 (excluding subsection G of such section)* 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~~ 10 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 make publicly available guidelines no later than September 1, 2010, for purposes of developing processes and procedures implementing the provisions of this act. The development, issuance, and publication 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.**