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SENATE BILL NO. 542

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 58.1-605, 58.1-606, 58.1-642, 58.1-1009, 58.1-1011, 58.1-1021.03, 58.1-1720, 58.1-1730, 58.1-2233, 58.1-2234, 58.1-2235, 58.1-2236, 58.1-2238, 58.1-2256, 58.1-2259, and 58.1-2272 of the Code of Virginia, and to repeal §§ 58.1-622 and 58.1-656 of the Code of Virginia, relating to dealer discounts.

Patron—Colgan (By Request)

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-605, 58.1-606, 58.1-642, 58.1-1009, 58.1-1011, 58.1-1021.03, 58.1-1720, 58.1-1730, 58.1-2233, 58.1-2234, 58.1-2235, 58.1-2236, 58.1-2238, 58.1-2256, 58.1-2259, and 58.1-2272 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-605. To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section.

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. ~~No discount under § 58.1-622 shall be allowed on a local sales tax.~~

C. The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least 60 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

D. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax moneys, and such payments shall be charged to the account of each such city or county under the special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: one-sixth of the total adjustment shall be included in the payments for the next six months. In addition, the payment shall include a refund of amounts erroneously not paid to the city or county and not previously refunded during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

G. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district under a town school board of three members appointed by the town council, the county treasurer shall

pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is increased by the annexation of territory since the last preceding school age population census, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such census and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

H. One-half of such payments to counties are subject to the further qualification, other than as set out in subsection G above, that in any county wherein is situated any incorporated town not constituting a separate special school district which has complied with its charter provisions providing for the election of its council and mayor for a period of at least four years immediately prior to the adoption of the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of each such town bears to the school age population of the entire county, based on the latest statewide school census. The preceding requirement pertaining to the time interval between compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city. If the school age population of any such town not constituting a separate special school district is increased by the annexation of territory or otherwise since the last preceding school age population census, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such census and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

I. Notwithstanding the provisions of subsection H, the board of supervisors of a county may, in its discretion, appropriate funds to any incorporated town not constituting a separate school district within such county which has not complied with the provisions of its charter relating to the elections of its council and mayor, an amount not to exceed the amount it would have received from the tax imposed by this chapter if such election had been held.

J. It is further provided that if any incorporated town which would otherwise be eligible to receive funds from the county treasurer under subsection G or H of this section be located in a county which does not levy a general retail sales tax under the provisions of this law, such town may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to all the provisions of this section generally applicable to cities and counties. Any tax levied under the authority of this subsection shall in no case continue to be levied on or after the effective date of a county ordinance imposing a general retail sales tax in the county within which such town is located.

§ 58.1-606. To what extent and under what conditions cities and counties may levy local use tax; collection thereof by Commonwealth and return of revenues to the cities and counties.

A. The council of any city and the governing body of any county which has levied or may hereafter levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto~~, except that no discount under § 58.1-622 shall be allowed on a local use tax~~.

B. The council of any city and the governing body of any county desiring to impose a local use tax under this section may do so in the manner following:

1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local use tax may be imposed by the council or governing body by the adoption of a resolution by a majority of all the members thereof, by a recorded yea and nay vote, stating its purpose and referring to this section, and providing that the local use tax shall become effective on the first day of a month at least 60 days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption. The resolution authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision of law, including any charter provision.

2. If the city or county has not imposed the local sales tax authorized by § 58.1-605, the local use tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections B and C of § 58.1-605.

C. Any local use tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax.

D. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. However, the local use tax authorized by this section shall apply to tangible personal property purchased without this Commonwealth for use or consumption within the city or county imposing the local use tax, or stored within the city or county for use or

consumption, where the property would have been subject to the sales tax if it had been purchased within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is without this Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible personal property involved shall be remitted to the Commonwealth by such dealer without attempting to assign the shipment to any city or county.

F. Local use tax revenue shall be distributed among the cities and counties for which it is collected, respectively, as shown by the records of the Department, and the procedure shall be the same as that prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is not accurately assignable to a particular city or county shall be distributed monthly by the appropriate state authorities among the cities and counties in this Commonwealth imposing the local use tax upon the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax was in effect in the taxable month involved, as shown by the records of the Department, and computed with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed among such cities and counties, respectively, in the month of distribution. Notwithstanding any other provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use tax. Any significant changes to the method of local use tax distribution shall be phased in over a five-year period. Distribution information shall be shared with the affected localities prior to implementation of the changes.

G. All local use tax revenue shall be used, applied or disbursed by the cities and counties as provided in § 58.1-605 with respect to local sales tax revenue.

§ 58.1-642. Collection of tire recycling fee; deductions; exemptions.

A. The tire recycling fee levied under this chapter shall be collected by the Tax Commissioner in the same manner as is the retail sales and use tax, pursuant to Chapter 6 (§ 58.1-600 et seq.) of this title.

B. The fee imposed under § 58.1-641 shall not apply to new tires for:

1. Any device moved exclusively by human power;

2. Any device used exclusively upon stationary rails or tracks; or

3. Any device used exclusively for farming purposes, except a farm truck.

~~C. For the purpose of compensating a retailer of tires for accounting for and remitting the fee levied by this chapter, such retailer shall be allowed five percent of the amount of fee due and accounted for in the form of a deduction in submitting his return and paying the amount due by him if the amount due was not delinquent at the time of payment.~~

§ 58.1-1009. Preparation, design and sale of stamps; unlawful sale or purchase of stamps a felony; penalty.

A. The Department is hereby authorized and directed to have prepared and to sell stamps suitable for denoting the tax on all cigarettes. The Department shall design, adopt and promulgate the form and kind of stamps to be used. Stamps so adopted and promulgated shall be known as and termed "Virginia revenue stamps," and in any information or indictment, it shall be sufficient to describe the stamps as "Virginia revenue stamps."

Any person other than the Department who sells such revenue stamps, not affixed to cigarettes sold and delivered by them, whether the said stamps be genuine or counterfeit, shall be guilty of a Class 6 felony. Any person who purchases revenue stamps from anyone other than the Department, unless such stamps are already affixed to cigarettes being purchased by and delivered to him, or who uses or affixes, or causes to be used or affixed, any revenue stamps not purchased from the Department by the owner of the cigarettes being handled or stamped, whether such stamps are genuine or counterfeit, shall be guilty of a Class 6 felony. ~~When stamping agents have qualified as such with the Department, as provided in § 58.1-1011, and purchase stamps as prescribed herein for use on taxable cigarettes sold and delivered by them, the Department shall allow to each stamping agent on such sales of revenue stamps a discount equal to two percent of the total charged to the stamping agent by the Department for the purchase of the revenue stamps. The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all discounts allowed to stamping agents pursuant to this subsection and such amount shall be taken into consideration in preparing the official estimate of the total revenues to be collected during the fiscal year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available for programs financed by the Virginia Health Care Fund as a result of such discounts shall be made up by the general fund.~~

All stamps prescribed by the Department shall be designed and furnished in such a fashion as to permit identification of the wholesale dealer or retail dealer that affixed the stamp to the particular package of cigarettes, by means of a serial number or other mark on the stamp. The Department shall maintain for not less than three years information identifying which wholesale dealer or retail dealer affixed the revenue stamp to each package of cigarettes.

B. 1. The Department shall provide Virginia revenue stamps to certain wholesale dealers holding a current permit issued pursuant to § 58.1-1011 prior to collecting the tax imposed under this chapter from such wholesale dealer. Such wholesale dealers shall be allowed to obtain the stamps from the Department without concurrent payment of the tax only if the conditions of this subsection are satisfied.

In order to obtain Virginia revenue stamps without concurrent payment of the tax imposed under this chapter, a wholesale dealer shall (i) file a bond with a corporate surety licensed to do business in Virginia, or (ii) file an irrevocable letter of credit satisfactory to the Tax Commissioner as to the bank or savings institution, the form and substance, and payable to the Commonwealth in the face amount of approximately two times the anticipated average monthly amount in purchases of Virginia revenue stamps by the wholesale dealer as determined by the Commissioner. The letter of credit shall be from a bank incorporated or authorized to conduct banking business under the laws of the Commonwealth or authorized to do business in the Commonwealth under the banking laws of the United States, or a federally insured savings institution located in the Commonwealth. Such bond or irrevocable letter of credit shall be conditioned upon payment of the tax imposed by this chapter relating to Virginia revenue stamps obtained by the wholesale dealer from the Department (without concurrent payment of the tax) for which such tax, net of any applicable discount described in subsection A, shall be paid within the 30 days immediately following the date that the related revenue stamp or stamps were provided by the Department to such wholesale dealer. Any such bond shall be so written that, on timely payment of the premium thereon, it shall continue in force from year to year unless sooner terminated.

2. Any surety on a bond filed by any wholesale dealer shall be released and discharged from any and all liability to the Commonwealth accruing on such bond after the expiration of 60 days from the date upon which such surety shall have lodged with the Commissioner written request to be released and discharged. But such request shall not operate to relieve, release or discharge such surety from any liability already accrued or which shall accrue before the expiration of such 60-day period. The Commissioner shall, promptly on receipt of such notice, notify the wholesale dealer who furnished such bond. Unless such dealer on or before the expiration of such 60 days' notice files with the Commissioner a new bond or letter of credit that meets all the conditions described in subdivision 1, the Commissioner shall forthwith require the wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining revenue stamps from the Department.

In the event that liability upon the bond or letter of credit filed by the wholesale dealer with the Commissioner shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the Commissioner any surety on the bond becomes unsatisfactory or unacceptable, then the Commissioner may require the filing of a new bond or letter of credit. Unless such new bond or letter of credit meets all the conditions described in subdivision 1, the Commissioner shall forthwith require the wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining revenue stamps from the Department.

3. Notwithstanding any other provision in this subsection, the Tax Commissioner, for good cause, shall require a wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining revenue stamps from the Department, regardless of whether or not such dealer has filed or agreed to file the bond or letter of credit described in this subsection.

C. In addition to any other penalties provided by law, the Department may revoke the permit issued, in accordance with § 58.1-1011, to any person who violates any provision of this section.

§ 58.1-1011. Qualification for permit to affix Virginia revenue stamps; penalty.

Only manufacturers, wholesale dealers and retail dealers may be permitted as stamping agents. It shall be unlawful for any person to purchase, possess or affix Virginia revenue stamps without first obtaining a permit to do so from the Department. Every manufacturer, wholesale dealer or retail dealer who desires to qualify as a stamping agent with the Department shall make application to the Department on forms prescribed for this purpose, which shall be supplied upon request. The application forms will require such information relative to the nature of business engaged in by the applicant as the Department deems necessary to the qualifying of the applicant as a stamping agent. The Department shall conduct a background investigation, to include a Virginia Criminal History Records search, and fingerprints of the applicant, or its responsible principals, managers, and other persons engaged in handling and stamping cigarettes at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the Department determines a National Criminal Records search is necessary, on applicants for licensure as cigarette tax stamping agents. The Department may refuse to issue a stamping permit or may suspend, revoke or refuse to renew a stamping permit issued to any person, partnership, corporation, limited liability company or business trust, if it determines that the principals,

managers, and other persons engaged in handling and stamping cigarettes at the licensable location of the applicant has been (i) found guilty of any fraud or misrepresentation in any connection, (ii) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering, or (iii) convicted of a felony. Anyone who knowingly and willfully falsifies, conceals or misrepresents a material fact or knowingly and willfully makes a false, fictitious or fraudulent statement or representation in any application for a stamping permit to the Department shall be guilty of a Class 1 misdemeanor. The Department may establish an application or renewal fee not to exceed $750 to be retained by the Department to be applied to the administrative and other costs of processing stamping agent applications, conducting background investigations and issuing stamping permits. Any application or renewal fees collected pursuant to this section in excess of such costs as of June 30 in even numbered years shall be reported to the State Treasurer and deposited into the state treasury. If the Department after review of his application, believes the manufacturer, wholesale dealer or retail dealer to be qualified, the Department shall issue to the applicant a permit qualifying him as a stamping agent, as defined in this chapter~~, and he shall be allowed the discount on purchases of Virginia revenue stamps as set out herein for stamping agents purchasing stamps for their individual use~~. Such stamping agent shall be authorized to affix Virginia revenue stamps, and in addition, if the applicant qualifies as a wholesale dealer, that shall be so noted on the permit issued by the Department. Permits issued pursuant to this section shall be valid for a period of three years from the date of issue unless revoked by the Department in the manner provided herein. The Department shall not sell Virginia revenue stamps to any person or entity unless and until the Department has issued that person or entity a permit to affix Virginia revenue stamps. The Department may promulgate regulations governing the issuance, suspension and revocation of stamping agent permits. The Department may at any time revoke the permit issued to any stamping agent as herein provided who is not in compliance with any of the provisions of this chapter, or any of the rules of the Department adopted and promulgated under authority of this chapter.

§ 58.1-1021.03. Monthly return and payments of tax.

~~A~~. Every distributor subject to the tax imposed under this article shall file a monthly return no later than the twentieth of each month on a form prescribed by the Department, covering the purchase of tobacco products by such distributor during the preceding month, for which tax is imposed pursuant to subsection A of § 58.1-1021.02, during the preceding month. Each return shall show the quantity and manufacturer's sales price of each tobacco product (i) brought, or caused to be brought, into the Commonwealth for sale; and (ii) made, manufactured, or fabricated in the Commonwealth for sale in the Commonwealth during the preceding calendar month. Every licensed distributor outside the Commonwealth shall in a like manner file a return showing the quantity and manufacturer's sales price of each tobacco product shipped or transported to retailers in the Commonwealth to be sold by those retailers, during the preceding calendar month. The return shall be made on forms furnished or prescribed by the Department and shall contain or be accompanied by such further information as the Department shall require. The distributor, at the time of filing the return, shall pay to the Department the tax imposed under subsection A of § 58.1-1021.02 on the manufacturer's sales price for each such package of tobacco product purchased in the preceding month on which tax is due.

~~B. For the purpose of compensating dealers for accounting for the tax imposed under this article, a retail dealer or wholesale dealer shall be allowed when filing a monthly return and paying the tax to deduct two percent of the tax otherwise due if the amount due was not delinquent at the time of payment.~~

~~The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all discounts allowed to retail or wholesale dealers pursuant to this subsection and such amount shall be taken into consideration in preparing the official estimate of the total revenues to be collected during the fiscal year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available for programs financed by the Virginia Health Care Fund as a result of such discounts shall be made up by the general fund.~~

§ 58.1-1720. Tax on fuel sold in certain transportation districts.

A. In addition to all other taxes now imposed by law, there is hereby imposed a license or privilege tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in (i) any county or city that is a member of any transportation district in which a rapid heavy rail commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass transportation system are owned, operated or controlled, by an agency or a commission as defined in § 15.2-4502, or (ii) any county or city that is a member of any transportation district that is subject to § 15.2-4515 C and that is contiguous to the Northern Virginia Transportation District.

The tax shall be imposed at a rate of 2.1 percent of the sales price charged by a distributor for fuels sold to a retail dealer for retail sale in any such county or city described in clause (i) or (ii). Such tax shall be imposed at the time of the sale by the distributor to the retail dealer. The tax imposed by this

article shall be paid by the distributor, but the distributor shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the retail dealer until paid and shall be recoverable at law in the same manner as other debts.

B. Every distributor collecting the tax imposed under this article shall file a monthly return no later than the twentieth of each month on a form prescribed by the Department, covering the sale of fuels by such distributor during the preceding month, for which tax is imposed pursuant to subsection A.

~~For purposes of compensating a distributor for accounting for and remitting the tax levied by this article, such distributor shall be allowed to deduct two percent of the tax otherwise due in submitting his return and paying the amount due by him if the amount was not delinquent at the time of payment.~~

§ 58.1-1730. Tax for enhanced 911 service; definitions.

A. As used in this section, unless the context requires a different meaning:

"Access lines" are defined to include residence and business telephone lines and other switched (packet or circuit) lines connecting the customer premises to the public switched telephone network for the transmission of outgoing voice-grade-capable telecommunications services. Centrex, PBX or other multistation telecommunications services will incur an E-911 tax charge on every line or trunk (Network Access Registrar or PBX trunk) that allows simultaneous unrestricted outward dialing to the public switched telephone network. ISDN Primary Rate Interface services will be charged five E-911 tax charges for every ISDN Primary Rate Interface network facility established by the customer. Other channelized services in which each voice-grade channel is controlled by the telecommunications provider shall be charged one tax for each line that allows simultaneous unrestricted outward dialing to the public switched telephone network. Access lines do not include local, state, and federal government lines; access lines used to provide service to users as part of the Virginia Universal Service Plan; interstate and intrastate dedicated WATS lines; special access lines; off-premises extensions; official lines internally provided and used by providers of telecommunications services for administrative, testing, intercept, coin, and verification purposes; and commercial mobile radio service.

"Automatic location identification" or "ALI" means a telephone network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireline 9-1-1 call.

"Automatic number identification" or "ANI" means a telephone network capability that enables the automatic display of the telephone number used to place a wireline 9-1-1 call.

"Centrex" means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.

"Communications services provider" means the same as provided in § 58.1-647.

"Enhanced 9-1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated, and provides the capability for ANI and ALI features.

"ISDN Primary Rate Interface" means 24 bearer channels, each of which is a full 64,000 bits per second. One of the channels is generally used to carry signaling information for the 23 other channels.

"Network Access Register" means a central office register associated with Centrex service that is required in order to complete a call involving access to the public switched telephone network outside the confines of that Centrex company. Network Access Register may be incoming, outgoing, or two-way.

"PBX" means public branch exchange and is telephone switching equipment owned by the customer and located on the customer's premises.

"PBX trunk" means a connection of the customer's PBX switch to the central office.

"Public safety answering point" or "PSAP" means a communications facility equipped and staffed on a 24-hour basis to receive and process 911 calls.

B. There is hereby imposed a monthly tax of $0.75 on the end user of each access line of the telephone service or services provided by a communications services provider. However, no such tax shall be imposed on federal, state, and local government agencies or on consumers of CMRS, as that term is defined in § 56-484.12. The revenues shall be collected and remitted monthly by the communications services provider to the Department and deposited into the Communications Sales and Use Tax Trust Fund. This tax shall be subject to the notification and jurisdictional provisions of subsection C.

C. If a customer believes that an amount of tax or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the communications services provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use or taxing jurisdiction, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other

information that the communications services provider reasonably requires to process the request. Within 15 days of receiving a notice under this section, the communications services provider shall review its records within an additional 15 days to determine the customer's taxing jurisdiction. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, the communications services provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the communications services provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by the communications services provider, and no cause of action based upon a dispute arising from such taxes shall accrue until a customer has reasonably exercised the rights and procedures set forth in this subsection.

For the purposes of this subsection, the terms "customer" and "place of primary use" shall have the same meanings provided in § 58.1-647.

~~D. For the purpose of compensating a communications services provider for accounting for and remitting the tax levied by this section, each communications services provider shall be allowed 3% of the amount of tax revenues due and accounted for in the form of a deduction in submitting the return and remitting the amount due.~~

§ 58.1-2233. Deductions; percentage discount.

A. A licensed importer who removes motor fuel from a terminal rack of a permissive or an elective supplier or licensed distributor may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel that the licensee received from the supplier and resold to a governmental entity, or resold to an organization described in subdivision 2 of § 58.1-2226 for use in the operation of an aircraft if, when removing the fuel, the licensee used an exempt access card or exempt access code specified by the supplier to notify the supplier of the licensee's intent to resell the fuel in an exempt sale.

B. A licensed importer who removes motor fuel from a terminal rack of a permissive supplier, an elective supplier, or a licensed distributor may deduct from the amount of tax otherwise payable to a supplier the amount calculated on aviation jet fuel that the licensee received from the supplier and resold to a licensed aviation consumer if, when removing the fuel, the licensee used an exempt access card or exempt access code specified by the supplier to notify the supplier of the licensee's intent to resell the aviation jet fuel to a licensed aviation consumer.

~~C. A licensed distributor who pays the tax due a supplier by the date the supplier is required to remit the tax to this Commonwealth may deduct from the amount due a discount of one percent of the amount of tax payable. A licensed importer who (i) removes motor fuel from a terminal rack of a permissive or an elective supplier and (ii) pays the tax due to the supplier by the date the supplier is required to remit the tax to the Commonwealth may deduct from the amount due a discount of one percent of the amount of tax payable. A supplier shall not directly or indirectly deny this discount to a licensed distributor or licensed importer who pays the tax due the supplier by the date the supplier is required to remit the tax to the Commonwealth.~~

§ 58.1-2234. Monthly reconciling returns.

A. A licensed distributor or a licensed importer who deducts exempt sales under subsection A of § 58.1-2233 or sales of aviation jet fuel to a licensed aviation consumer under subsection B of § 58.1-2233 when paying tax to a supplier shall file a monthly reconciling return for the exempt sales and sales to a licensed aviation consumer. The return shall list the following information and any other information required by the Commissioner:

1. The number of gallons for which a deduction was taken during the month, by supplier;

2. The number of gallons sold in exempt sales during the month, by type of sale, and the purchasers of the fuel in the exempt sales; and

3. The number of gallons of aviation jet fuel sold without collection of the tax during the month, and the purchasers of the fuel.

B. If the number of gallons for which a licensed distributor or licensed importer takes a deduction during a month exceeds the number of exempt gallons sold or, in the case of aviation jet fuel, the number of gallons sold without collection of the tax, the licensed distributor or licensed importer shall pay tax on the difference at the rate imposed by § 58.1-2217. ~~The licensed distributor or licensed importer shall not be allowed a percentage discount on any tax payable under this subsection.~~

C. If the number of gallons for which a licensed distributor or licensed importer takes a deduction during a month is less than the number of exempt gallons sold or, in the case of aviation jet fuel, is less than the number of gallons sold without collection of the tax, the Commissioner shall refund the amount of tax paid on the difference. ~~The Commissioner shall reduce the amount of the refund by the amount~~

~~of the percentage discount received on the fuel.~~

§ 58.1-2235. Information required on return filed by supplier.

A. A return of a supplier shall list all of the following information and any other information required by the Commissioner:

1. The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by type of fuel, seller, point of origin, destination state, and carrier;

2. The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of fuel, person receiving the fuel, terminal code, and carrier;

3. The number of gallons of motor fuel removed during the month for export, sorted by type of fuel, person receiving the fuel, terminal code, destination state, and carrier;

4. The number of gallons of motor fuel removed during the month from a terminal located in another state for conveyance to Virginia, as indicated on the shipping document for the fuel, sorted by type of fuel, person receiving the fuel, terminal code, and carrier; *and*

5. The number of gallons of motor fuel the supplier sold during the month to the following, sorted by type of fuel, exempt entity, person receiving the fuel, terminal code, and carrier:

a. A governmental entity whose use of fuel is exempt from the tax;

b. A licensed aviation consumer purchasing aviation jet fuel;

c. A licensed distributor or importer who resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as indicated by the distributor or importer;

d. A licensed distributor or importer who resold aviation jet fuel to a licensed aviation consumer as indicated by the distributor or importer;

e. A licensed exporter who resold the motor fuel to a person whose use of the fuel is exempt from tax in the destination state, as indicated by the exporter;

f. A nonprofit charitable organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air ambulance services for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft; and

g. A licensed distributor or importer who resold the motor fuel to a nonprofit charitable organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air ambulance services for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft~~; and~~.

~~6. The amount of discounts allowed under subsection C of § 58.1-2233 on motor fuel sold during the month to licensed distributors or licensed importers.~~

B. Suppliers shall not require information identifying who purchased exempt fuel from persons licensed under this chapter.

§ 58.1-2236. Deductions and discounts allowed a supplier when filing a return.

A. The supplier may deduct from the next monthly return those tax payments that were not remitted for the previous month to the supplier by (i) a licensed distributor or (ii) a licensed importer who removed the motor fuel on which the tax is due from a terminal of an elective or a permissive supplier. A supplier shall not be liable for the tax such a licensee owes the supplier but fails to pay. If such licensee pays the tax owed to a supplier after the supplier deducts the amount of such tax on a return, the supplier shall remit the payment to the Commissioner with the next monthly return filed subsequent to receipt of the tax.

B. ~~A supplier who timely files a return with the payment due may deduct, from the amount of tax payable with the return, an administrative discount of one-tenth of one percent of the amount of tax payable to the Commonwealth, not to exceed $5,000 per month.~~

~~C. A supplier who sells motor fuel directly to an unlicensed distributor or to a bulk user, retailer, or user of the fuel may take one-half of the same percentage discount on the fuel that a licensed distributor may take under subsection C of § 58.1-2233 when making deferred payments of tax to the supplier.~~

~~D.~~ When filing a return, a supplier who issues or authorizes the issuance of an exempt access card or an exempt access code to a person that enables the person to buy motor fuel at retail without paying tax on the fuel may deduct the amount of tax imposed on fuel purchased with the exempt access card or exempt access code. The amount of tax imposed on fuel purchased at retail with an exempt access card or exempt access code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel.

§ 58.1-2238. Returns and discounts of importers.

~~A.~~ A monthly return of a bonded importer or an occasional importer shall contain the following information concerning motor fuel imported during the period covered by the return and any other information required by the Commissioner:

1. The number of gallons of imported motor fuel acquired from a supplier who collected the tax due the Commonwealth on the fuel;

2. The number of gallons of imported motor fuel acquired from a supplier who did not collect the tax due the Commonwealth on the fuel, listed by source state, supplier, and terminal; and

3. If he is an occasional importer, the number of gallons of imported motor fuel acquired from a bulk plant, listed by bulk plant.

~~B. An importer shall not deduct an administrative discount under subsection C of § 58.1-2233 from the amount remitted with a return. An importer who imports motor fuel received from an elective supplier or a permissive supplier may deduct the percentage discount allowed by subsection C of § 58.1-2233 when remitting tax to the supplier, as trustee, for payment to the Commonwealth. An importer who imports motor fuel received from a supplier who is not an elective supplier or a permissive supplier shall not deduct the percentage discount allowed by subsection C of § 58.1-2233 when filing a return for the tax due.~~

§ 58.1-2256. Deductions and discounts for providers of alternative fuel filing returns.

~~A.~~ When a provider of alternative fuel files a return, the provider of alternative fuel may deduct from the amount of tax payable with the return the amount of tax any of the following licensees owes the provider of alternative fuel but failed to remit to the provider of alternative fuel:

1. A licensed bulk user of alternative fuel who has posted a bond in accordance with § 58.1-2246; and

2. A licensed retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246.

A provider of alternative fuel shall not be liable for tax that such a licensee owes the provider of alternative fuel but fails to pay. If such licensee pays the tax owed to a provider of alternative fuel after the provider of alternative fuel deducts the amount of such tax on a return, the provider of alternative fuel shall remit the payment to the Commissioner with the next monthly return filed subsequent to receipt of the tax.

~~B. A provider of alternative fuel who timely files a return with the payment due may deduct, from the amount of tax payable with the return, an administrative discount of one-tenth of one percent of the amount of tax payable to this Commonwealth, not to exceed a total of $5,000 per month. The administrative discount allowed a provider of alternative fuel who is also licensed as a supplier under Article 2 (§ 58.1-2204 et seq.) of this chapter shall not exceed $5,000 per month for both licenses.~~

§ 58.1-2259. Fuel uses eligible for refund.

A. A refund of the tax paid for the purchase of fuel in quantities of five gallons or more at any time shall be granted in accordance with the provisions of § 58.1-2261 to any person who establishes to the satisfaction of the Commissioner that such person has paid the tax levied pursuant to this chapter upon any fuel:

1. Sold and delivered to a governmental entity for its exclusive use;

2. Used by a governmental entity, provided persons operating under contract with a governmental entity shall not be eligible for such refund;

3. Sold and delivered to an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250 for its exclusive use in the operation of an aircraft;

4. Used by an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250 for its exclusive use in the operation of an aircraft, provided persons operating under contract with such an organization shall not be eligible for such refund;

5. Purchased by a licensed exporter and subsequently transported and delivered by such licensed exporter to another state for sales or use outside the boundaries of the Commonwealth if the tax applicable in the destination state has been paid, provided a refund shall not be granted pursuant to this section on any fuel which is transported and delivered outside of the Commonwealth in the fuel supply tank of a highway vehicle or an aircraft;

6. Used by any person performing transportation under contract or lease with any transportation district for use in a highway vehicle controlled by a transportation district created under the Transportation District Act of 1964 (§ 15.2-4500 et seq.) and used in providing transit service by the transportation district by contract or lease, provided the refund shall be paid to the person performing such transportation;

7. Used by any private, nonprofit agency on aging, designated by the Department for the Aging, providing transportation services to citizens in highway vehicles owned, operated or under contract with such agency;

8. Used in operating or propelling highway vehicles owned by a nonprofit organization that provides specialized transportation to various locations for elderly or disabled individuals to secure essential services and to participate in community life according to the individual's interest and abilities;

9. Used in operating or propelling buses owned and operated by a county or the school board thereof while being used to transport children to and from public school or from school to and from educational or athletic activities;

10. Used by buses owned or solely used by a private, nonprofit, nonreligious school while being

used to transport children to and from such school or from such school to and from educational or athletic activities;

11. Used by any county or city school board or any private, nonprofit, nonreligious school contracting with a private carrier to transport children to and from public schools or any private, nonprofit, nonreligious school, provided the tax shall be refunded to the private carrier performing such transportation;

12. Used in operating or propelling the equipment of volunteer firefighting companies and of volunteer rescue squads within the Commonwealth used actually and necessarily for firefighting and rescue purposes;

13. Used in operating or propelling motor equipment belonging to counties, cities and towns, if actually used in public activities;

14. Used for a purpose other than in operating or propelling highway vehicles, watercraft or aircraft;

15. Used off-highway in self-propelled equipment manufactured for a specific off-road purpose, which is used on a job site and the movement of which on any highway is incidental to the purpose for which it was designed and manufactured;

16. Proven to be lost by accident, including the accidental mixing of (i) dyed diesel fuel with tax-paid motor fuel, (ii) gasoline with diesel fuel, or (iii) undyed diesel fuel with dyed kerosene, but excluding fuel lost through personal negligence or theft;

17. Used in operating or propelling vehicles used solely for racing other vehicles on a racetrack;

18. Used in operating or propelling unlicensed highway vehicles and other unlicensed equipment used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or lessee of such vehicles and not operated on or over any highway for any purpose other than to move it in the manner and for the purpose mentioned. The amount of refund shall be equal to the amount of the taxes paid less one-half cent per gallon on such fuel so used which shall be paid by the Commissioner into the state treasury to the credit of the Virginia Agricultural Foundation Fund;

19. Used in operating or propelling commercial watercraft. The amount of refund shall be equal to the amount of the taxes paid less one and one-half cents per gallon on such fuel so used which shall be paid by the Commissioner into the state treasury to be credited as provided in subsection D of § 58.1-2289. If any applicant so requests, the Commissioner shall pay into the state treasury, to the credit of the Game Protection Fund, the entire tax paid by such applicant for the purposes specified in subsection D of § 58.1-2289. If any applicant who is an operator of commercial watercraft so requests, the Commissioner shall pay into the state treasury, to the credit of the Marine Fishing Improvement Fund, the entire tax paid by such applicant for the purposes specified in § 28.2-208;

20. Used in operating stationary engines, or pumping or mixing equipment on a highway vehicle if the fuel used to operate such equipment is stored in an auxiliary tank separate from the fuel tank used to propel the highway vehicle, and the highway vehicle is mechanically incapable of self-propulsion while fuel is being used from the auxiliary tank; or

21. Used in operating or propelling recreational and pleasure watercraft.

B. 1. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete highway vehicle, or a bulk feed delivery truck, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 35 percent of the tax paid on such fuel. For purposes of this section, a "bulk feed delivery truck" means bulk animal feed delivery trucks utilizing power take-off (PTO) driven auger or air feed discharge systems for off-road deliveries of animal feed.

2. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

C. Any person purchasing any fuel on which tax imposed pursuant to this chapter has been paid may apply for a refund of the tax if such fuel was consumed by a highway vehicle used in operating an urban or suburban bus line or a taxicab service. This refund also applies to a common carrier of passengers which has been issued a certificate of public convenience and necessity pursuant to §§ 46.2-2005 and 58.1-2204 providing regular route service over the highways of the Commonwealth. No refund shall be granted unless the majority of the passengers using such bus line, taxicab service or common carrier of passengers do so for travel of a distance of not more than 40 miles, one way, in a single day between their place of abode and their place of employment, shopping areas or schools.

If the applicant for a refund is a taxicab service, he shall hold a valid permit from the Department to engage in the business of a taxicab service. No applicant shall be denied a refund by reason of the fee arrangement between the holder of the permit and the driver or drivers, if all other conditions of this section have been met.

Under no circumstances shall a refund be granted more than once for the same fuel. The amount of

refund under this subsection shall be equal to the amount of the taxes paid, except refunds granted on the tax paid on fuel used by a taxicab service shall be in an amount equal to the tax paid less $0.01 per gallon on the fuel used.

Any refunds made under this subsection shall be deducted from the urban highway funds allocated to the highway construction district, pursuant to Article 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title 33.1, in which the recipient has its principal place of business.

Except as otherwise provided in this chapter, all provisions of law applicable to the refund of fuel taxes by the Commissioner generally shall apply to the refunds authorized by this subsection. Any county having withdrawn its roads from the secondary system of state highways under provisions of § 11 Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is now provided by law with respect to other fuel tax receipts.

D. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

E. Refunds resulting from any fuel shipments diverted from Virginia shall be based on the amount of tax paid for the fuel ~~less discounts allowed by § 58.1-2233~~.

F. Any person who is required to be licensed under this chapter and is applying for a refund shall not be eligible for such refund if the applicant was not licensed at the time the refundable transaction was conducted.

§ 58.1-2272. Prohibited acts; criminal penalties.

A. Any person who commits any of the following acts shall be guilty of a Class 1 misdemeanor:

1. Failing to obtain a license required by this chapter;

2. Failing to file a return required by this chapter;

3. Failing to pay a tax when due under this chapter;

4. Failing to pay a tax collected on behalf of a destination state to that state when it is due;

5. Making a false statement in an application, return, ticket, invoice, statement, or any other document required under this chapter;

6. Making a false statement in an application for a refund;

7. Failing to keep records as required under this chapter;

8. Refusing to allow the Commissioner or a representative of the Commissioner to examine the person's books and records concerning fuel;

9. Failing to make a required disclosure of the correct amount of fuel sold or used in the Commonwealth;

10. Failing to file a replacement or additional bond or certificate of deposit as required under this chapter;

11. Failing to show or give a shipping document as required under this chapter;

12. Refusing to allow a licensed distributor, licensed exporter, or licensed importer to defer payment of tax to the supplier, as required by § 58.1-2231;

13. Refusing to allow a bulk user of alternative fuel or a retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246 to defer payment of tax to the provider of alternative fuel, as required by § 58.1-2252;

14. Refusing to allow ~~a licensed distributor or~~ a licensed importer to take a deduction ~~or discount~~ allowed by § 58.1-2233 when remitting the tax to the supplier, or to allow a licensed retailer of alternative fuel to take a deduction ~~or discount~~ allowed by § 58.1-2254 when remitting the tax to the provider of alternative fuel;

15. Using, delivering, or selling any aviation fuel for use or intended for use in highway vehicles or watercraft;

16. Violating the provisions of § 58.1-2278;

17. Interfering with or refusing to permit seizures authorized under § 58.1-2274; or

18. Delivering fuel from a transport truck or tank wagon to the fuel tank of a highway vehicle, except in an emergency.

B. A person who knowingly commits any of the following acts shall be guilty of a Class 1 misdemeanor:

1. Dispenses any fuel on which tax levied pursuant to this chapter has not been paid into the supply tank of a highway vehicle, watercraft, or aircraft; or

2. Allows any fuel on which tax levied pursuant to this chapter has not been paid to be dispensed into the supply tank of a highway vehicle, watercraft, or aircraft.

2. That §§ 58.1-622 and 58.1-656 of the Code of Virginia are repealed effective with the retail sales and use tax return and the communications sales and use tax return, respectively, for June

2010, due in July 2010.

3. That in no event shall a discount be available for revenue stamps bearing the cigarette excise tax rate on or after July 1, 2010.

4. That the provisions of this act amending and reenacting §§ 58.1-642, 58.1-1021.03, 58.1-1720, and 58.1-1730 of the Code of Virginia are effective beginning with the returns for June 2010, due in July 2010.