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HOUSE BILL NO. 1413

Offered January 12, 2011

Prefiled September 27, 2010

A *BILL to amend and reenact §§ 58.1-2217, 58.1-2249, 58.1-2289, as it is currently effective and as it may become effective, 58.1-2701, as it is currently effective and as it may become effective, and 58.1-2706 of the Code of Virginia, relating to motor fuels tax rate.*

Patrons—Scott, J.M. and Kory

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2217, 58.1-2249, 58.1-2289, as it is currently effective and as it may become effective, 58.1-2701, as it is currently effective and as it may become effective, and 58.1-2706 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2217. Taxes levied; rate.

A. 1. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline and gasohol. *Beginning January 1, 2012, the tax rate shall be in an amount per gallon equal to a percentage to be calculated by the Commissioner of the statewide average retail price of a gallon of self-serve unleaded regular gasoline, excluding federal and state excise taxes and rounded up to the nearest one-tenth of one cent. In computing the amount of the percentage, the Commissioner shall use the period from October 1, 2010, through March 31, 2011, to determine the average retail price of a gallon of self-serve unleaded regular gasoline, excluding federal and state excise taxes and rounded up to the nearest one-tenth of one cent. Using this average price, the Commissioner shall calculate the percentage that most closely yields seventeen and one-half cents per gallon. This percentage shall not change and shall be used to calculate the amount of cents per gallon for the tax for all future base periods as set forth in subdivision 2.*

2. *The amount of cents per gallon tax rate shall be an amount per gallon equal to the percentage calculated by the Commissioner in subdivision 1, multiplied by the statewide average retail price of a gallon of self-serve unleaded regular gasoline for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner and rounded up to the nearest one-tenth of one cent. The Commissioner shall use two base periods in determining such average retail price. The period from April 1 through September 30 shall be the base period for purposes of determining the cents per gallon for the tax for the immediately following period beginning January 1 and ending June 30, inclusive. The period from October 1 through March 31 shall be the base period for purposes of determining the cents per gallon for the tax for the immediately following period beginning July 1 and ending December 31, inclusive.*

B. 1. (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. *Beginning January 1, 2012, the tax rate shall be in an amount per gallon equal to a percentage to be calculated by the Commissioner of the statewide average retail price of a gallon of self-serve diesel fuel, excluding federal and state excise taxes and rounded up to the nearest one-tenth of one cent. In computing the amount of the percentage, the Commissioner shall use the period from October 1, 2010, through March 31, 2011, to determine the average retail price of a gallon of self-serve diesel fuel, excluding federal and state excise taxes and rounded up to the nearest one-tenth of one cent. Using this average price, the Commissioner shall calculate the percentage that most closely yields seventeen and one-half cents per gallon. This percentage shall not change and shall be used to calculate the amount of cents per gallon for the tax for all future base periods as set forth in subdivision 2.*

2. *The amount of cents per gallon tax rate shall be an amount per gallon equal to the percentage calculated by the Commissioner in subdivision 1, multiplied by the statewide average retail price of a gallon of self-serve diesel fuel for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner and rounded up to the nearest one-tenth of one cent. The Commissioner shall use two base periods in determining such average retail price. The period from April 1 through September 30 shall be the base period for purposes of determining the cents per gallon for the tax for the immediately following period beginning January 1 and ending June 30, inclusive. The period from October 1 through March 31 shall be the base period for purposes of determining the cents per gallon for the tax for the immediately following period beginning July 1 and ending December 31, inclusive.*

B. 1. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of

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59 sixteen cents per gallon on diesel fuel. *Beginning January 1, 2012, the tax rate shall be in an amount*
60 *per gallon equal to a percentage to be calculated by the Commissioner of the statewide average retail*
61 *price of a gallon of self-serve diesel fuel, excluding federal and state excise taxes and rounded up to the*
62 *nearest one-tenth of one cent. In computing the amount of the percentage, the Commissioner shall use*
63 *the period from October 1, 2010, through March 31, 2011, to determine the average retail price of a*
64 *gallon of self-serve diesel fuel, excluding federal and state excise taxes and rounded up to the nearest*
65 *one-tenth of one cent. Using this average price, the Commissioner shall calculate the percentage that*
66 *most closely yields sixteen cents per gallon. This percentage shall not change and shall be used to*
67 *calculate the amount of cents per gallon for the tax for all future base periods as set forth in*
68 *subdivision 2.*

69 2. *The amount of cents per gallon tax rate shall be an amount per gallon equal to the percentage*
70 *calculated by the Commissioner in subdivision 1, multiplied by the statewide average retail price of a*
71 *gallon of self-serve diesel fuel for the applicable base period, excluding federal and state excise taxes,*
72 *as determined by the Commissioner and rounded up to the nearest one-tenth of one cent. The*
73 *Commissioner shall use two base periods in determining such average retail price. The period from*
74 *April 1 through September 30 shall be the base period for purposes of determining the cents per gallon*
75 *for the tax for the immediately following period beginning January 1 and ending June 30, inclusive. The*
76 *period from October 1 through March 31 shall be the base period for purposes of determining the cents*
77 *per gallon for the tax for the immediately following period beginning July 1 and ending December 31,*
78 *inclusive.*

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

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

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

95 E. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of five
96 cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than
97 an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first
98 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by
99 any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per
100 gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an
101 aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed
102 under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation
103 jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of ~~sixteen cents per~~
104 ~~gallon levied on diesel fuel~~, along with any penalties and interest that may accrue.

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

108 § 58.1-2249. Tax on alternative fuel.

109 A. (Contingent expiration date - see Editor's notes) There is hereby levied a tax at the rate of
110 ~~seventeen and one-half cents per gallon levied on diesel fuel~~ on liquid alternative fuel used to operate a
111 highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying
112 fuel to operate the vehicle. There is hereby levied a tax at a rate equivalent to ~~seventeen and one-half~~
113 ~~cents per gallon that levied on diesel fuel~~ on all other alternative fuel used to operate a highway vehicle.
114 The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

115 A. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of ~~sixteen~~
116 ~~cents per gallon levied on diesel fuel~~ on liquid alternative fuel used to operate a highway vehicle by
117 means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the
118 vehicle. There is hereby levied a tax at a rate equivalent to ~~sixteen cents per gallon that levied on diesel~~
119 ~~fuel~~ on all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine
120 the equivalent rate applicable to such other alternative fuels.

121 B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of ~~fifty~~
 122 ~~dollars \$50~~ per vehicle on each highway vehicle that is fueled from a private source if the alternative
 123 fuels tax levied under this article has not been paid on fuel used in the vehicle. If such a highway
 124 vehicle is not in operation by January 1 of any year, the license tax shall be reduced by one-twelfth for
 125 each complete month which shall have elapsed since the beginning of such year.

126 § 58.1-2289. (Contingent expiration date - see Editor's notes) Disposition of tax revenue generally.

127 A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by
 128 the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be
 129 promptly paid into the state treasury and shall constitute special funds within the Commonwealth
 130 Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for
 131 use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds
 132 shall accrue to these funds. Except as provided in § 33.1-23.03:1, no portion of the revenue derived
 133 from taxes collected pursuant to §§ 58.1-2217, 58.1-2249 or 58.1-2701, and remaining after authorized
 134 refunds for nonhighway use of fuel, shall be used for any purpose other than the construction,
 135 reconstruction or maintenance of the roads and projects comprising the State Highway System, the
 136 Interstate System and the secondary system of state highways and expenditures directly and necessarily
 137 required for such purposes, including the retirement of revenue bonds.

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

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

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

153 C. One-half cent of the tax collected on each gallon of fuel on which a refund has been paid for
 154 gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, for fuel consumed in tractors and
 155 unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state
 156 treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds
 157 and defray the costs of the research and educational phases of the agricultural program, including
 158 supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University,
 159 the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research
 160 Station, including reasonable expenses of the Virginia Agricultural Council.

161 D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial
 162 watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of
 163 the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the
 164 purposes provided generally in subsection C of § 29.1-701, including acquisition, construction,
 165 improvement and maintenance of public boating access areas on the public waters of this
 166 Commonwealth and for other activities and purposes of direct benefit and interest to the boating public
 167 and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial
 168 fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be
 169 used for the construction, repair, improvement and maintenance of the public docks of this
 170 Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction,
 171 improvement and maintenance of the public docks shall be made according to a plan developed by the
 172 Virginia Marine Resources Commission.

173 From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for
 174 the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury
 175 for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the
 176 State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public
 177 docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters,
 178 (iii) make environmental improvements including, without limitation, fisheries management and habitat
 179 enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § 33.1-223,
 180 a sum as established by the General Assembly.

181 E. Notwithstanding other provisions of this section, there shall be transferred from moneys collected

182 pursuant to this section to a special fund within the Commonwealth Transportation Fund in the state
183 treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, an amount
184 equal to one percent of a sum to be calculated as follows: the tax revenues collected pursuant to this
185 chapter, at the tax rates in effect on December 31, 1986, less refunds authorized by this chapter and less
186 taxes collected for aviation fuels.

187 F. The additional revenues, less any additional refunds authorized, generated by increases in the rates
188 of taxes under this chapter pursuant to enactments of the 2007 Session of the General Assembly shall be
189 collected pursuant to Article 4 of this chapter and deposited into the Highway Maintenance and
190 Operating Fund.

191 § 58.1-2289. (Contingent effective date - see Editor's notes) Disposition of tax revenue generally.

192 A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by
193 the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be
194 promptly paid into the state treasury and shall constitute special funds within the Commonwealth
195 Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for
196 use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds
197 shall accrue to these funds. Except as provided in § 33.1-23.03:1, no portion of the revenue derived
198 from taxes collected pursuant to §§ 58.1-2217, 58.1-2249 or § 58.1-2701, and remaining after authorized
199 refunds for nonhighway use of fuel, shall be used for any purpose other than the construction,
200 reconstruction or maintenance of the roads and projects comprising the State Highway System, the
201 Interstate System and the secondary system of state highways and expenditures directly and necessarily
202 required for such purposes, including the retirement of revenue bonds.

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

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

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

218 C. One-half cent of the tax collected on each gallon of fuel on which the refund has been paid at the
219 ~~rate of seventeen cents per gallon, or in the case of diesel fuel, fifteen and one-half cents per gallon for~~
220 ~~gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel,~~ for fuel consumed in tractors and
221 unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state
222 treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds
223 and defray the costs of the research and educational phases of the agricultural program, including
224 supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University,
225 the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research
226 Station, including reasonable expenses of the Virginia Agricultural Council.

227 D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial
228 watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of
229 the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the
230 purposes provided generally in subsection C of § 29.1-701, including acquisition, construction,
231 improvement and maintenance of public boating access areas on the public waters of this
232 Commonwealth and for other activities and purposes of direct benefit and interest to the boating public
233 and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial
234 fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be
235 used for the construction, repair, improvement and maintenance of the public docks of this
236 Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction,
237 improvement and maintenance of the public docks shall be made according to a plan developed by the
238 Virginia Marine Resources Commission.

239 From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for
240 the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury
241 for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the
242 State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public
243 docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters,

244 (iii) make environmental improvements including, without limitation, fisheries management and habitat
 245 enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § 33.1-223,
 246 a sum as established by the General Assembly.

247 E. Notwithstanding other provisions of this section, there shall be transferred from moneys collected
 248 pursuant to this section to a special fund within the Commonwealth Transportation Fund in the state
 249 treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, an amount
 250 equal to one percent of a sum to be calculated as follows: the tax revenues collected pursuant to this
 251 chapter, at the tax rates in effect on December 31, 1986, less refunds authorized by this chapter and less
 252 taxes collected for aviation fuels.

253 § 58.1-2701. (Contingent expiration date - see Editor's notes) Amount of tax.

254 A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to ~~\$0.21~~
 255 *three and one-half cents per gallon greater than the total tax imposed on each gallon of diesel fuel*
 256 *under subsection B of § 58.1-2217* calculated on the amount of motor fuel, diesel fuel, or liquefied gases
 257 (which would not exist as liquids at a temperature of ~~sixty~~ 60 degrees Fahrenheit and a pressure of 14.7
 258 pounds per square inch absolute); used in its operations within the Commonwealth.

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

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

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

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

271 § 58.1-2701. (Contingent effective date - see Editor's notes) Amount of tax.

272 A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to
 273 ~~nineteen and one-half~~ *three and one-half cents per gallon greater than the total tax imposed on each*
 274 *gallon of diesel fuel under subsection B of § 58.1-2217* calculated on the amount of motor fuel, diesel
 275 fuel, or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~ 60 degrees Fahrenheit
 276 and a pressure of 14.7 pounds per square inch absolute); used in its operations within the
 277 Commonwealth.

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

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

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

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

290 § 58.1-2706. Credit for payment of motor fuel, diesel fuel, or liquefied gases tax.

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

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

304 C. The Department may allow a refund upon receipt of proper application and review. It shall be at

305 the discretion of the Department to determine whether an audit is required.

306 D. The refund may be allowed without a formal hearing if the amount of refund is agreed to by the
307 applicant. Otherwise, a formal hearing on the application shall be held by the Department after notice of
308 not less than ~~ten~~ 10 days to the applicant and the Attorney General.

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

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