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## HOUSE BILL NO. 1654

Offered January 12, 2011

Prefiled January 10, 2011

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 motor fuels tax rate.

Patron—Purkey

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

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

§ 58.1-2217. Taxes levied; rate.

A. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline and gasohol.

B. (Contingent expiration date - see Editor's notes) There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on diesel fuel.

B. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of sixteen cents per gallon on diesel fuel.

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

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

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

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

F. The rates of taxes on gasoline, gasohol, and diesel fuel under subsections A and B shall be increased or decreased annually based on the motor fuel index component of the transportation group, which is included in the Consumer Price Index (CPI) as established by the U.S. Department of Labor's Bureau of Labor Statistics, using the average of such index for the 12-month period ending November 30. In December of each year, beginning December 2011, 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 and shall promptly report the same in writing to the Governor and the General Assembly. Once the Commissioner has computed the adjusted rates of taxes, then the adjusted rate of tax for each such fuel shall be imposed for the immediately following 12-month period beginning on April 1 and ending on the next April 1 in lieu of the rate of tax for gasoline, gasohol, and diesel fuel as set forth

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59 under subsection A or B, as applicable.

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

63 § 58.1-2249. Tax on alternative fuel.

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

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

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

84 § 58.1-2701. (Contingent expiration date - see Editor's notes) Amount of tax.

85 A. Except as provided in subsection B, every motor carrier shall pay a road tax ~~at a per-gallon rate~~  
86 ~~equivalent to \$0.24 three and one-half cents per gallon greater than the tax imposed on each gallon of~~  
87 ~~diesel fuel under § 58.1-2217 (excluding subsection G of such section)~~ calculated on the amount of  
88 motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~ 60  
89 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within  
90 the Commonwealth.

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

93 B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles  
94 that are not registered under the International Registration Plan shall pay a fee of \$150 per year for each  
95 qualified highway vehicle. *The amount of the fee shall be adjusted annually on April 1, according to the*  
96 *index set forth in subsection F of § 58.1-2217.* The fee is due and payable when the vehicle registration  
97 fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

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

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

104 § 58.1-2701. (Contingent effective date - see Editor's notes) Amount of tax.

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

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

113 B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles  
114 that are not registered under the International Registration Plan shall pay a fee of \$100 per year for each  
115 qualified highway vehicle. *The amount of the fee shall be adjusted annually on April 1, according to the*  
116 *index set forth in subsection F of § 58.1-2217.* The fee is due and payable when the vehicle registration  
117 fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

118 If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due  
119 at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration  
120 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 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 provisions of the first enactment shall become effective on December 1, 2011, but only if a majority of the qualified voters of the Commonwealth voting at the election directed by law to be held Tuesday, November 8, 2011, vote in the affirmative to ratify the provisions of this act.

3. That it shall be the duty of the regular election officers of all the counties and cities of the Commonwealth conducting the election directed by law to be held on Tuesday, November 8, 2011, at the places appointed for holding the same, to open a poll on such day and take the sense of the qualified voters of such counties and cities upon the ratification or rejection of annually indexing the motor fuels tax rate, pursuant to subsection F of § 58.1-2217 of the Code of Virginia, according to the most recent motor fuel index component of the transportation group, which is included in the Consumer Price Index (CPI) as established by the U.S. Department of Labor's Bureau of Labor Statistics. Notice of the referendum shall be given, the ballots shall be prepared, distributed and voted, and the results thereof ascertained and certified, in accordance with Title 24.2 of the Code of Virginia, relating to special elections.

The ballot shall contain the following question:

"QUESTION: Shall the motor fuels tax rate be increased or decreased annually by the percentage increase or decrease in the retail price per gallon of motor fuel as specified in Chapter (. . . ) of the Acts of Assembly of 2011?"

The State Board of Elections shall cause to be sent to the electoral boards of such counties and cities sufficient copies of the full text of this act and the question contained herein for the officers of election to post in each polling place on election day. The State Board of Elections shall without delay make out and transmit to the Governor an official copy of the report, segregated by transportation district, of the whole number of votes cast at the election for and against the referendum question, certified by it. The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

4. The neutral explanation of the ballot question in enactment 3, pursuant to § 30-19.10 of the Code of Virginia is as follows:

Present Law

Motor fuels taxes are imposed on the wholesale distributors of the fuel at the time they purchase the motor fuels. The distributors deliver and sell the fuels to retailers, who then sell the fuels to the public. The rate of the tax paid by the distributors on gasoline and diesel fuel is seventeen and one-half cents per gallon.

Proposed Amendment

The proposed amendment would increase or decrease the motor fuel tax rates each year by the

182 annual average percentage increase or decrease in the retail price of motor fuel.  
183 5. That the provisions of this act shall expire on December 1, 2016.