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HOUSE BILL NO. 1409

Offered January 9, 2013

Prefiled December 18, 2012

A BILL to amend and reenact §§ 58.1-2217, 58.1-2249, 58.1-2289, 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.

Patron—Scott, J.M.

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 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, 2014, 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, 2012, through March 31, 2013, 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) There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on diesel fuel. *Beginning January 1, 2014, 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, 2012, through March 31, 2013, 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) There is hereby levied a tax at the rate of sixteen cents per gallon

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on diesel fuel. *Beginning January 1, 2014, 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, 2012, through March 31, 2013, 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 sixteen 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.

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~~ *levied on gasoline,* along with any penalties and interest that may accrue.

E. (Contingent expiration date) 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~~ *levied on diesel fuel,* along with any penalties and interest that may accrue.

E. (Contingent effective date) 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~~ *levied on diesel fuel,* along with any penalties and interest that may accrue.

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

§ 58.1-2249. Tax on alternative fuel.

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

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

B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of $50

per vehicle on each highway vehicle registered in Virginia that is an electric motor vehicle. If such a highway vehicle is registered for a period other than one year as provided under § 46.2-646, the license tax shall be multiplied by the number of years or fraction thereof that the vehicle will be registered.

§ 58.1-2289. (Contingent effective date) Disposition of tax revenue generally.

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

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

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

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

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

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

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

E. Notwithstanding other provisions of this section, there shall be transferred from moneys collected pursuant to this section to a special fund within the Commonwealth Transportation Fund in the state

treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, an amount equal to one percent of a sum to be calculated as follows: the tax revenues collected pursuant to this chapter, at the tax rates in effect on December 31, 1986, less refunds authorized by this chapter and less taxes collected for aviation fuels.

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

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

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

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

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

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

§ 58.1-2701. (Contingent effective date) Amount of tax.

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

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

B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles that are not registered under the International Registration Plan shall pay a fee of $100 per year for each qualified highway vehicle, regardless of whether such vehicle will be included on the motor carrier's IFTA return. The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

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

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

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

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

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

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

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

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

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

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