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## HOUSE BILL NO. 1438

Offered January 9, 2013

Prefiled December 20, 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—Purkey

Referred to Committee on Finance

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

**1. That §§ 58.1-2217, 58.1-2249, 58.1-2289, 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. There is hereby levied a tax at the rate of ~~seventeen and one-half~~ 17.5 cents (\$0.175) per gallon on gasoline and gasohol.

*Beginning January 1, 2014, and every January 1 thereafter, the rate shall be adjusted by a percentage, as determined by the Commissioner and rounded up to the closest one-tenth of one percent, equal to the average percentage change in the U.S. Department of Transportation's Transportation Services Index for the 36 months ending October 31 of the year immediately preceding the affected year.*

B. (Contingent expiration date - see Editor's notes) There is hereby levied a tax on each gallon of diesel fuel at the same rate of ~~seventeen and one-half cents per gallon on diesel fuel as the rate in effect pursuant to subsection A.~~

B. (Contingent effective date - see Editor's notes) There is hereby levied a tax on each gallon of diesel fuel at the rate of ~~sixteen~~ 1.5 cents per gallon on diesel fuel (\$0.015) less than the rate in effect in subsection A.

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 (\$0.05) 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~~ 17.5 cents (\$0.175) per gallon, 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 (\$0.05) 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 (\$0.05) 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 (\$0.005) 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~~ 17.5 cents (\$0.175) per gallon, 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 (\$0.05) 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 (\$0.05) 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 (\$0.005) 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~~ 16 cents (\$0.16) per gallon, 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.**

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59 A. (Contingent expiration date - see Editor's notes) There is hereby levied a tax at the rate of  
60 ~~seventeen and one-half cents per gallon in effect under subsection A of § 58.1-2217~~ on each gallon of  
61 liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores  
62 fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied a tax at a rate  
63 equivalent to ~~seventeen and one-half cents per gallon~~ *the rate in effect pursuant to subsection A of*  
64 *§ 58.1-2217* on each gallon of all other alternative fuel used to operate a highway vehicle. The  
65 Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

66 A. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of ~~sixteen~~  
67 ~~1.5 cents per gallon (\$0.015) less than the rate in effect pursuant to subsection A of § 58.1-2217~~ on  
68 each gallon of liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply  
69 tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied  
70 a tax at a rate equivalent to ~~sixteen 1.5 cents per gallon (\$0.015) less than the rate in effect pursuant to~~  
71 ~~subsection A of § 58.1-2217~~ on each gallon of all other alternative fuel used to operate a highway  
72 vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

73 B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of \$50  
74 per vehicle on each highway vehicle registered in Virginia that is an electric motor vehicle. *Beginning*  
75 *January 1, 2014, and each January 1 thereafter, the amount of the license tax shall be adjusted by the*  
76 *same percentage adjustment to the tax rate pursuant to subsection A of § 58.1-2217.* If such a highway  
77 vehicle is registered for a period other than one year as provided under § 46.2-646, the license tax shall  
78 be multiplied by the number of years or fraction thereof that the vehicle will be registered.

79 **§ 58.1-2289. (Contingent effective date - see Editor's notes) Disposition of tax revenue generally.**

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

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

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

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

106 C. One-half cent (\$0.005) of the tax collected on each gallon of fuel on which the refund has been  
107 paid at the rate of ~~seventeen cents per gallon, or in the case of diesel fuel, fifteen and one-half cents per~~  
108 ~~gallon, in effect pursuant to subsection A of § 58.1-2217~~ for each gallon of fuel consumed in tractors  
109 and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state  
110 treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds  
111 and defray the costs of the research and educational phases of the agricultural program, including  
112 supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University,  
113 the Department of Agriculture and Consumer Services, and the ~~Virginia Truck and Ornamentals~~  
114 ~~Research Station Hampton Roads Agricultural Research and Extension Center~~, including reasonable  
115 expenses of the Virginia Agricultural Council.

116 D. One and one-half cents (\$0.015) of the tax collected on each gallon of fuel used to propel a  
117 commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game  
118 Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries  
119 until expended for the purposes provided generally in subsection C of § 29.1-701, including acquisition,  
120 construction, improvement, and maintenance of public boating access areas on the public waters of ~~this~~

the 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~~ 1.5 cents (\$0.015) 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~~ the 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 \$0.24 ~~\$0.035 more~~ per gallon ~~than the rate in effect pursuant to subsection A 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 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. *Beginning January 1, 2014, and each January 1 thereafter, the amount of the fee under this subsection shall be adjusted by the same percentage of the tax rate adjustment pursuant to subsection A of § 58.1-2217.*

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 - see Editor's notes) 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 (\$0.02) ~~more~~ per gallon ~~than the rate in effect pursuant to subsection A 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. *Beginning January 1, 2014, and each January 1 thereafter, the amount of the fee under this subsection shall be adjusted by the same percentage adjustment to the tax rate pursuant to subsection A of § 58.1-2217.*

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.

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

184 **§ 58.1-2706. Credit for payment of motor fuel, diesel fuel, or liquefied gases tax.**

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

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

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

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

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

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