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HOUSE BILL NO. 1663

Offered January 9, 2013

Prefiled January 7, 2013

A *BILL to amend the Code of Virginia by adding in Title 58.1 a chapter numbered 37.1, consisting of sections numbered 58.1-3735.1 through 58.1-3735.27, relating to local motor fuels tax.*

 Patron—Minchew

 Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 58.1 a chapter numbered 37.1, consisting of sections numbered 58.1-3735.1 through 58.1-3735.27, as follows:

CHAPTER 37.1.**LOCAL MOTOR FUELS TAX.****§ 58.1-3735.1. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Commissioner" means the Commissioner of the Department of Motor Vehicles.

"Cost price" means the same as that term is defined in § 58.1-602, and also includes all federal and state excise taxes and storage tank fees paid by the distributor. "Cost price" does not include separately stated federal diesel fuel excise taxes, unless the distributor fails to exclude the federal diesel excise tax when collecting the tax imposed pursuant to this chapter.

"Department" means the Department of Motor Vehicles, acting directly or through its duly authorized officers and agents.

"Distributor" means (i) any person engaged in the business of selling fuels in the Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any fuels for sale, or any other person engaged in the business of selling fuels in the Commonwealth; (ii) any person who makes, manufactures, fabricates, processes, or stores fuels in the Commonwealth for sale in the Commonwealth; or (iii) any person engaged in the business of selling fuels outside the Commonwealth who ships or transports fuels to any person in the business of selling fuels in the Commonwealth.

"Fuel" means any fuel subject to tax under Chapter 22 (§ 58.1-2200 et seq.).

"Gross sales" means the same as that term is defined in § 58.1-602.

"Retail dealer" means any person, including a distributor, who sells fuels to a consumer or to any person for any purpose other than resale.

"Sale" means the same as that term is defined in § 58.1-602 and also includes the distribution of fuel by a distributor to itself as a retail dealer.

"Sales price" means the same as that term is defined in § 58.1-602 and also includes all transportation and delivery charges, regardless of whether the charges are separately stated on the invoice. "Sales price" does not include separately stated federal diesel fuel excise taxes, unless the distributor fails to exclude the federal diesel excise tax when collecting the tax imposed pursuant to this chapter.

§ 58.1-3735.2. Regulation; forms.

The Commissioner may promulgate regulations and shall prescribe such forms as shall be necessary to effectuate and enforce this chapter.

§ 58.1-3735.3. Disclosure of information; penalties.

A. The Commissioner may divulge tax information collected in administering this chapter to the applicable governing body of the county, city, or town that imposes the tax under this chapter.

B. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed in § 58.1-3 as though that person were a tax official as defined in that section.

§ 58.1-3735.4. Levy; payment of tax.

A. Any county or city is authorized to impose a tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in any county or city who engages in the business of selling gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, as such fuels are defined in § 58.1-2201, at wholesale to retail dealers for retail sale in the county or city. The tax shall be imposed at a rate not to exceed \$0.10 per gallon. The tax levied under this section shall be imposed at the time of sale by the distributor to the retail dealer on the same sales on which the tax under Chapter 22.1 (§ 58.1-2291 et seq.) is imposed.

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59 B. The tax imposed by this section shall be paid by the distributor, but the distributor shall
60 separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such
61 tax shall be a debt from the retail dealer to the distributor until paid and shall be recoverable at law in
62 the same manner as other debts. No action at law or suit in equity under this chapter shall be
63 maintained in the Commonwealth by any distributor who is not registered under § 58.1-2299.2 or is
64 delinquent in the payment of taxes imposed under this chapter.

65 C. The revenue from the tax imposed under this chapter shall be used by the applicable county or
66 city for surface transportation projects, such as roads, bridges, and tunnels. The revenue may also be
67 used for public-private partnerships to build new road infrastructure, for payment of principal and
68 interest on local revenue bonds financing road infrastructure improvements, for matching money for
69 Commonwealth road-building projects, and for regional road infrastructure projects undertaken in
70 conjunction with other localities.

71 **§ 58.1-3735.5. When tax return and payment are due; credits for overpayment.**

72 A. Every distributor required to collect the taxes imposed under this chapter shall file a return with
73 the Commissioner. Such return shall be in the form specified by the Commissioner and contain the
74 information required by the Commissioner. The return and the payment for the taxes levied pursuant to
75 this chapter shall be due for each full month in a calendar year. Any return and payment required
76 under this section shall be deemed timely filed if received by the Commissioner by midnight of the
77 twentieth day of the second month succeeding the month for which the return and payment are due.
78 Each return shall report tax liabilities that accrue in the month for which the return is due.

79 B. Returns and payments shall be (i) postmarked on or before the fifteenth day of the second month
80 succeeding the month for which the return and payment are due or (ii) received by the Department by
81 the twentieth day of the second month succeeding the month for which the return and payment are due.
82 However, a monthly return of the tax for the month of May shall be (a) postmarked by June 25 or (b)
83 received by the Commissioner by the last business day the Department is open for business in June.

84 If a tax return and payment due date falls on a Saturday, Sunday, or state or banking holiday, the
85 return shall be postmarked on or before the fifteenth day of the second month succeeding the month for
86 which the return and payment are due or received by the Department by midnight of the next business
87 day the Department is open for business. This provision shall not apply to a return of the tax for the
88 month of May.

89 A return and payment shall be deemed postmarked if it carries the official cancellation mark of the
90 United States Postal Service or other postal or delivery service.

91 C. Notwithstanding the provisions of any other section in this chapter, the Commissioner may require
92 all or certain distributors to file tax returns and payments electronically.

93 D. Any person entitled to a credit for overpayment of a tax levied under this chapter shall claim
94 such credit on his monthly return no later than one year following the date of the overpayment.

95 **§ 58.1-3735.6. Deductions.**

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

99 **§ 58.1-3735.7. Bad debts.**

100 A. In any return filed under the provisions of this chapter, a distributor may credit, against the tax
101 shown to be due on the return, the amount of tax previously returned and paid on accounts which are
102 owed to the distributor and which have been found to be worthless within the period covered by the
103 return. The credit, however, shall not exceed the amount of the uncollected sales price determined by
104 treating prior payments on each debt as consisting of the same proportion of the sales price, tax levied
105 under this chapter, and other nontaxable charges as the total debt originally owed to the distributor.
106 The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid
107 to the dealer shall be included in the first return filed after such collection.

108 B. Notwithstanding any other provision of this section, a distributor whose volume and character of
109 uncollectible accounts, including checks returned for insufficient funds, renders it impractical to
110 substantiate the credit on an account-by-account basis may, subject to the approval of the Department,
111 utilize an alternative method of substantiating the credit.

112 **§ 58.1-3735.8. Exclusion from professional license tax.**

113 The amount of the tax imposed under this chapter and collected by a distributor in any taxable year
114 shall be excluded from gross receipts for purposes of any tax imposed under Chapter 37 (§ 58.1-3700 et
115 seq.).

116 **§ 58.1-3735.9. Certificates of registration; issuance; civil penalty.**

117 A. Every person desiring to engage in the business of a distributor and to sell fuel to a retail dealer
118 for retail sale within any county or city shall file an application for a certificate of registration with the
119 Commissioner for collection and payment of the tax imposed pursuant to this chapter.

120 B. The application for certificate of registration shall be on a form prescribed by the Commissioner

and shall set forth the name under which the applicant intends to transact the business for which registration is required under subsection A, the principal location of the place of business, and such other information as the Commissioner may require.

Each applicant shall sign the application as owner of the business. If the business is owned by an association, partnership, or corporation, the application shall be signed by a member, partner, executive officer, or other person specifically authorized by the association, partnership, or corporation to sign.

C. Upon approval of the application by the Commissioner, a certificate of registration shall be issued. The certificate is not assignable but shall be valid only for the person in whose name it is issued.

D. If the holder of a certificate of registration issued under this section ceases to conduct his business in the Commonwealth at the principal place of business designated in the certificate, the certificate shall automatically expire. The holder shall notify the Commissioner, in writing, within 30 days after he has ceased to conduct the business. If the holder of the certificate desires to continue in the business for which he was registered but at a different location, he shall so inform the Commissioner, in writing, at least 30 days prior to the contemplated relocation. The Commissioner shall then issue an amended certificate designating the new principal place of business. The amended certificate shall become effective on the date that the certificate for the previous place of business expires. There shall be no charge for obtaining an amended certificate.

E. The holder of the certificate of registration issued under this chapter who discontinues in the Commonwealth the business for which the certificate was issued, whether by transferring his business to another person, by selling out his business or stock of goods, or by quitting the business, shall notify the Commissioner in writing within 15 days of such discontinuance and shall surrender the certificate to the Commissioner. The notice shall state the effective date of the discontinuance and, if the certificate holder has transferred the business or otherwise relinquished control to another person by sale or otherwise, the date of the sale or transfer and the name and address of the person to whom the business is transferred or relinquished. The notice shall also include any other information required by the Commissioner.

F. Whenever a person fails to comply with any provision of this chapter or any rule or regulation relating thereto, the Commissioner, after giving such person 10 days' notice in writing, may revoke or suspend the certificate of registration held by such person. The notice may be personally served or served by registered mail directed to the last known address of such person.

G. Any person required to obtain a certificate of registration under this chapter who engages in business in the Commonwealth without obtaining such certificate, or after such certificate has been suspended or revoked, and each officer of any corporation which so engages in business, shall be subject to a civil penalty. The amount of the civil penalty assessed against a person for his (i) first violation shall be \$5,000 and (ii) second and subsequent violations shall be \$10,000. Each day's continuance in business in violation of this section shall constitute a separate offense.

§ 58.1-3735.10. Collection of tax.

Any distributor collecting the tax on transactions exempt or not taxable under this chapter shall transmit to the Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has since been refunded to the purchaser or credited to his account.

Any distributor who neglects, fails, or refuses to collect such tax upon every taxable sale made by him, his agents, or his employees shall be liable for and pay the tax himself, and such distributor shall not thereafter be entitled to sue for or recover in the Commonwealth any part of the purchase price from the purchaser until such tax is paid. Moreover, any distributor who neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, is guilty of a Class 1 misdemeanor.

All sums collected by a distributor as required by this chapter shall be deemed to be held in trust for the Commonwealth.

§ 58.1-3735.11. Absorption of tax prohibited.

No person shall advertise or hold out to the public, directly or indirectly, that he will absorb all or any part of the tax levied under this chapter, or that he will relieve the purchaser of the payment of all or any part of such tax. Any person who violates this section is guilty of a Class 2 misdemeanor.

§ 58.1-3735.12. Sale of business.

If any distributor liable for any tax, penalty, or interest levied under this chapter sells out his business or stock of goods or quits the business, he shall make a final return and payment within 15 days after the date of selling or quitting the business. His successors or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of such taxes, penalties, and interest due and unpaid until such former owner produces a receipt from the Commissioner showing that they have been paid or a certificate stating that no taxes, penalties, or interest are due. If the purchaser of a business or stock of goods fails to withhold the purchase money as provided in this section, he shall be

182 personally liable for the payment of the taxes, penalties, and interest due and unpaid on account of the
183 operation of the business by any former owner.

184 **§ 58.1-3735.13. Late filing or payment; civil penalty.**

185 A. Any person who fails to file a return required by this chapter on a timely basis shall be subject to
186 a civil penalty. The amount of the civil penalty shall be as follows:

- 187 1. \$50 for the first violation;
- 188 2. \$200 for the second violation;
- 189 3. \$500 for the third violation; and
- 190 4. \$1,000 for the fourth and subsequent violations.

191 After imposition of the penalty under this subsection, the amount of the penalty, if not paid within 30
192 days of receipt of notice of such penalty, shall bear interest at the rate of one percent per month or
193 fraction thereof until the penalty has been paid.

194 B. Interest at the rate of one percent per month or fraction thereof shall accrue on the amount of
195 any taxes due under this chapter that have not been paid to the Commissioner on a timely basis. Such
196 interest shall continue to accrue until such taxes have been paid.

197 Any person who fails to pay the Commissioner on a timely basis the amount of taxes due under this
198 chapter shall also be subject to a civil penalty. The amount of the civil penalty shall be equal to 10
199 percent of the tax due or \$50, whichever is greater; however, penalties resulting from an audit shall be
200 equal to 10 percent of the tax due.

201 After imposition of the civil penalty under this subsection, the amount of the penalty, if not paid
202 within 30 days of receipt of notice of such penalty, shall bear interest at the rate of one percent per
203 month until both tax and penalty have been paid.

204 C. The Commissioner is authorized to reduce or waive any penalties under this section if the
205 violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner.

206 **§ 58.1-3735.14. False or fraudulent return; civil penalty.**

207 Any person liable for a tax levied under this chapter who files a false or fraudulent return with the
208 intent to evade the tax shall be subject to a civil penalty. The amount of the civil penalty shall be equal
209 to 50 percent of the amount of the tax intended to be evaded by the filing of such return. The civil
210 penalty shall be in addition to the amount of the tax intended to be evaded.

211 **§ 58.1-3735.15. Payment of civil penalty; disposition; waiver.**

212 Any civil penalty assessed pursuant to this chapter shall be payable to the Department, shall be in
213 addition to any other penalty or tax that may be imposed as provided in this chapter, and shall be
214 collectible by the Commissioner in the same manner as if it were part of the tax levied. The amount of
215 any civil penalty imposed under this chapter shall bear interest at the rate of one percent per month
216 until paid. All civil penalties imposed under this chapter shall be deposited as provided in
217 § 58.1-2299.20. Notwithstanding any other provisions of this chapter, the Commissioner is authorized to
218 reduce or waive any civil penalties under this chapter if the violation is due to a reasonable or good
219 cause shown to the satisfaction of the Commissioner.

220 **§ 58.1-3735.16. Prohibited acts; criminal penalties.**

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

- 222 1. Failing to obtain a certificate of registration required by this chapter;
- 223 2. Failing to file a return required by this chapter;
- 224 3. Failing to pay a tax when due under this chapter;
- 225 4. Making a false statement in an application, return, ticket, invoice, statement, or any other
226 document required under this chapter;
- 227 5. Failing to keep records as required under this chapter; or
- 228 6. Refusing to allow the Commissioner or a representative of the Commissioner to examine the
229 person's books and records concerning transactions taxable under this chapter.

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

- 231 1. Dispenses into the supply tank of a highway vehicle, watercraft, or aircraft any fuel on which a
232 tax required to be levied under this chapter has not been paid; or
- 233 2. Allows to be dispensed into the supply tank of a highway vehicle, watercraft, or aircraft any fuel
234 on which a tax required to be levied under this chapter has not been paid.

235 **§ 58.1-3735.17. Willful commission of prohibited acts; criminal penalties.**

236 Any person who willfully commits any of the following acts with the intent to (i) evade or circumvent
237 the taxes imposed under this chapter or (ii) assist any other person in efforts to evade or circumvent
238 such taxes is guilty of a Class 6 felony, if he:

- 239 1. Does not pay the taxes imposed under this chapter and diverts the proceeds from such taxes for
240 other purposes;
- 241 2. Is a distributor required to be registered under the provisions of this chapter, or the agent or
242 representative of such a distributor, and converts or attempts to convert proceeds from taxes imposed
243 under this chapter for the use of the distributor or the distributor's agent or representative, with the

intent to defraud the Commonwealth;

3. Illegally collects taxes imposed under this chapter when not authorized or licensed by the Commissioner to do so;

4. Conspires with any other person or persons to engage in an act, plan, or scheme to defraud the Commonwealth of proceeds from taxes levied under this chapter;

5. Fails to remit to the Commissioner any tax levied pursuant to this chapter, if he (i) has added, or represented that he has added, the tax to the sales price for the fuel and (ii) has collected the amount of the tax; or

6. Applies for or collects from the Department a tax credit when the person knows or has reason to know that fuel for which the credit is claimed has been or will be used for a taxable purpose; however, if the amount of fuel involved is not more than 20 gallons, such person is guilty of a Class 1 misdemeanor.

§ 58.1-3735.18. Bond.

The Commissioner may, when in his judgment it is necessary and advisable so to do in order to secure the collection of the tax levied by this chapter, require any person subject to such tax to file with him a bond, with such surety as the Commissioner determines is necessary to secure the payment of any tax, penalty, or interest due or which may become due from such person.

§ 58.1-3735.19. Jeopardy assessment.

If the Commissioner is of the opinion that the collection of any tax or any amount of tax required to be collected and paid under this chapter will be jeopardized by delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including penalties. In the case of a tax for a current period, the Commissioner may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and such tax shall be immediately due and payable, whether or not the time otherwise allowed by law for filing a return and paying the tax has expired. Assessments provided for in this section shall become immediately due and payable, and if any such tax, penalty, or interest is not paid upon demand of the Commissioner, he shall proceed to collect the same by legal process, or, in his discretion, he may require the taxpayer to file such bond as in his judgment may be sufficient to protect the interest of the Commonwealth.

§ 58.1-3735.20. Memorandum of lien for collection of taxes.

A. If any taxes or fees, including penalties and interest, due under this chapter become delinquent or are past due, the applicable local treasurer may file a memorandum of lien in the circuit court clerk's office of the county or city in which the taxpayer's place of business is located or in which the taxpayer resides. If the taxpayer has no place of business or residence within the Commonwealth, such memorandum may be filed in the Circuit Court of the City of Richmond. A copy of such memorandum may also be filed in the clerk's office of all counties and cities in which the taxpayer owns real estate. Such memorandum shall be recorded in the judgment docket book and shall have the effect of a judgment in favor of the locality, to be enforced as provided in Article 19 (§ 8.01-196 et seq.) of Chapter 3 of Title 8.01, mutatis mutandis, except that a writ of fieri facias may be issued any time after the memorandum is filed. The lien on real estate shall become effective at the time the memorandum is filed in the jurisdiction in which the real estate is located.

B. Recordation of a memorandum of lien hereunder shall not affect the right to exoneration under this chapter nor shall an application for correction pursuant to § 58.1-2299.15 affect the power of the Commissioner to collect the tax, except as specifically provided in this chapter.

§ 58.1-3735.21. Recordkeeping requirements; inspection of records; civil penalties.

A. Every distributor required to make a return and pay or collect any tax under this chapter shall keep and preserve suitable records of the sales taxable under this chapter, and such other books of account as may be necessary to determine the amount of tax due hereunder, and such other pertinent information as may be required by the Commissioner. Such records shall be kept and maintained for a period to include the Department's current fiscal year and the previous three fiscal years.

B. The Commissioner or any agent authorized by him may examine during the usual business hours all records, books, papers, or other documents of any distributor required to be registered under this chapter relating to the sales price of any fuel subject to taxation under this chapter to verify the truth and accuracy of any statement or any other information as to a particular sale.

C. Any person who fails to keep or retain records as required by this section shall be subject to a civil penalty. The amount of the civil penalty assessed against a person for his first violation shall be \$1,000. The amount of the civil penalty assessed against a person for each subsequent violation shall be \$1,000 more than the amount of the civil penalty for the preceding violation.

D. Any person who refuses to allow an inspection authorized under this section shall be subject to a

305 civil penalty of \$5,000 for each refusal.

306 **§ 58.1-3735.22. Application to Commissioner for correction; appeal.**

307 A. Any person assessed with any tax administered by the Department pursuant to this chapter or
308 against whom an order or decision of the Commissioner has been adversely rendered relating to the
309 provisions of this chapter may, within 30 days from the date of such assessment, order, or decision
310 apply for relief to the Commissioner. Such application shall be in the form prescribed by the
311 Department and shall fully set forth the grounds upon which the applicant relies and all facts relevant
312 to the applicant's contention. The Commissioner may also require such additional information,
313 testimony, or documentary evidence as he deems necessary to make a fair determination of the
314 application.

315 B. On receipt of a written notice of intent to file under subsection A for relief from a tax assessment,
316 the Commissioner shall refrain from collecting the tax until the time for filing hereunder has expired,
317 unless he determines that collection is in jeopardy.

318 **§ 58.1-3735.23. Period of limitations.**

319 The taxes imposed by this chapter shall be assessed within three years from the date on which such
320 taxes became due and payable. In the case of a false or fraudulent return with intent to evade payment
321 of the taxes imposed by this chapter, or a failure to file a return, the taxes may be assessed, or a
322 proceeding in court for the collection of such taxes may be begun without assessment, at any time. The
323 Commissioner shall not examine any person's records beyond the three-year period of limitations unless
324 he has reasonable evidence of fraud or reasonable cause to believe that such person was required by
325 law to file a return and failed to do so.

326 **§ 58.1-3735.24. Waiver of time limitation on assessment of taxes.**

327 If, before the expiration of the time prescribed for assessment of any tax levied pursuant to this
328 chapter and assessable by the Department, both the Commissioner and the taxpayer have consented in
329 writing to its assessment after such time, the tax may be assessed any time prior to the expiration of the
330 period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing
331 made before the expiration of the period previously agreed upon.

332 **§ 58.1-3735.25. Suits to recover taxes.**

333 If any person fails to pay the tax or any civil penalty levied under this chapter, including accrued
334 penalties and interest, when due, the applicable locality may bring an appropriate action for the
335 recovery of such tax, penalty, and interest, provided that if it is found that such failure to pay was
336 willful, judgment shall be rendered for double the amount of the tax or civil penalty found to be due,
337 with costs.

338 **§ 58.1-3735.26. Liability of corporate or partnership officer; penalty.**

339 Any corporate or partnership officer who directs or causes the business of which he is a corporate
340 or partnership officer to fail to pay, collect, or truthfully account for and pay over any fuels tax for
341 which the business is liable under this chapter or to a trustee shall, in addition to other penalties
342 provided by law, be liable for a penalty in the amount of the tax evaded or not paid, collected, or
343 accounted for and paid over. The penalty shall be assessed and collected in the same manner as such
344 taxes are assessed and collected. However, this penalty shall be dischargeable in bankruptcy
345 proceedings.

346 **§ 58.1-3735.27. Disposition of tax revenues.**

347 All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter, after
348 subtraction of the direct costs of administration by the Department, shall be distributed to the applicable
349 locality to be used by such locality for surface transportation projects, such as roads, bridges, and
350 tunnels. The revenue may also be used for public-private partnerships to build new road infrastructure,
351 for payment of principal and interest on local revenue bonds financing road infrastructure
352 improvements, for matching money for Commonwealth road-building projects, and for regional road
353 infrastructure projects undertaken in conjunction with other localities.

354 **2. That the provisions of this act shall not (i) reduce or otherwise affect appropriations of any**
355 **revenue of the Commonwealth or (ii) reduce or otherwise affect transportation services,**
356 **construction, or maintenance in the locality imposing the tax under this act.**