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HOUSE BILL NO. 1677

Offered January 9, 2013

Prefiled January 7, 2013

A BILL to amend and reenact §§ 33.1-23.03:1, 33.1-23.03:8, 58.1-603, 58.1-604, 58.1-604.1, 58.1-609.1, 58.1-614, 58.1-638, 58.1-639, 58.1-2201, 58.1-2204, 58.1-2208, 58.1-2211, 58.1-2217, 58.1-2218, 58.1-2222, 58.1-2226, 58.1-2228, 58.1-2230, 58.1-2232, 58.1-2233, 58.1-2234, 58.1-2235, 58.1-2259, 58.1-2261, 58.1-2263, 58.1-2272, 58.1-2275, 58.1-2289, as it is currently effective and as it may become effective, 58.1-2290, 58.1-3700.1, and 62.1-44.34:13 of the Code of Virginia and to repeal §§ 58.1-2227 and 58.1-2239 and Article 5 (§§ 58.1-2244 through 58.1-2258) of Chapter 22 of Title 58.1 of the Code of Virginia, relating to adjusting the sources of transportation funding by eliminating the tax on all motor fuels except diesel fuel and blended diesel fuel, increasing the amount of current sales and use tax revenue dedicated to the Transportation Trust Fund, and increasing the sales and use tax rate.

Patron—Hugo

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-23.03:1, 33.1-23.03:8, 58.1-603, 58.1-604, 58.1-604.1, 58.1-609.1, 58.1-614, 58.1-638, 58.1-639, 58.1-2201, 58.1-2204, 58.1-2208, 58.1-2211, 58.1-2217, 58.1-2218, 58.1-2222, 58.1-2226, 58.1-2228, 58.1-2230, 58.1-2232, 58.1-2233, 58.1-2234, 58.1-2235, 58.1-2259, 58.1-2261, 58.1-2263, 58.1-2272, 58.1-2275, 58.1-2289, as it is currently effective and as it may become effective, 58.1-2290, 58.1-3700.1, and 62.1-44.34:13 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-23.03:1. Transportation Trust Fund.

There is hereby created in the Department of the Treasury a special nonreverting fund to be known as the Transportation Trust Fund, consisting of:

1. Funds remaining for highway construction purposes, among the several highway systems pursuant to § 33.1-23.1.

2. [Repealed.]

3. ~~The~~ *Revenues designated for this fund pursuant to § 58.1-638 and* additional revenues generated by enactments of Chapters 11~~,~~ ~~12~~ and 15 of the Acts of Assembly, 1986 Special Session, and designated for this fund.

4. Tolls and other revenues derived from the projects financed or refinanced pursuant to this title which are payable into the state treasury and tolls and other revenues derived from other transportation projects, which may include upon the request of the applicable appointed governing body, as soon as their obligations have been satisfied, such tolls and revenue derived for transportation projects pursuant to § 33.1-253 (Chesapeake Bay Bridge and Tunnel District) and to the Richmond Metropolitan Authority, established in Chapter 70 (§ 15.2-7000 et seq.) of Title 15.2, or if the appointed governing body requests refunding or advanced refunding by the Board and such refunding or advanced refunding is approved by the General Assembly. Such funds shall be held in separate subaccounts of the Transportation Trust Fund to the extent required by law or the Board.

5. Tolls and other revenues derived from the Richmond-Petersburg Turnpike, provided that such funds shall be held in a separate subaccount of the Transportation Trust Fund and allocated as set forth in Chapter 574 of the Acts of Assembly of 1983 until expiration of that Act.

6. Such other funds as may be appropriated by the General Assembly from time to time, and designated for this fund.

7. All interest, dividends and appreciation which may accrue to the Transportation Trust Fund and the Highway Maintenance and Construction Fund, except that interest on funds becoming part of the Transportation Trust Fund under subdivision 1 and the Highway Maintenance and Construction Fund shall not become part of the Transportation Trust Fund until July 1, 1988.

8. All amounts required by contract to be paid over to the Transportation Trust Fund.

9. Concession payments paid to the Commonwealth by a private entity pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.).

§ 33.1-23.03:8. Priority Transportation Fund established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Priority Transportation Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be

credited to it. All funds as may be designated in the appropriation act for deposit to the Fund shall be paid into the state treasury and credited to the Fund. Such funds shall include:

1. ~~A portion of the moneys actually collected, including penalty and interest, attributable to any increase in revenues from the taxes imposed under Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1, with such increase being calculated as the difference between such tax revenues collected in the manner prescribed under Chapter 22 less such tax revenues that would have been collected using the prescribed manner in effect immediately before the effective date of Chapter 22, computed without regard to increases in the rates of taxes under Chapter 22 pursuant to enactments of the 2007 Session of the General Assembly. The portion to be deposited to the Fund shall be the moneys actually collected from such increase in revenues and allocated for highway and mass transit improvement projects as set forth in § 33.1-23.03:2, but not including any amounts that are allocated to the Commonwealth Port Fund and the Commonwealth Airport Fund under such section. There shall also be deposited into the Fund all additional federal revenues attributable to Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1~ *Twenty million dollars of the additional revenues attributable to the 0.75 percent increase in the sales and use tax rate enacted by the 2013 Session of the General Assembly*;

2. Beginning with the fiscal year ending June 30, 2000, and for fiscal years thereafter, all revenues that exceed the official forecast, pursuant to § 2.2-1503, for (i) the Highway Maintenance and Operating Fund and (ii) the allocation to highway and mass transit improvement projects as set forth in § 33.1-23.03:2, but not including any amounts that are allocated to the Commonwealth Port Fund and the Commonwealth Airport Fund under such section;

3. All revenues deposited into the Fund pursuant to § 58.1-2531; and

4. Any other such funds as may be transferred, allocated, or appropriated.

All moneys in the Fund shall first be used for debt service payments on bonds or obligations for which the Fund is expressly required for making debt service payments, to the extent needed. The Fund shall be considered a part of the Transportation Trust Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes enumerated in subsection B ~~of this section~~. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller.

B. The Commonwealth Transportation Board shall use the Fund to facilitate the financing of priority transportation projects throughout the Commonwealth. The Board may use the Fund either (i) by expending amounts therein on such projects directly, (ii) by payment to any authority, locality, commission or other entity for the purpose of paying the costs thereof, or (iii) by using such amounts to support, secure, or leverage financing for such projects. No expenditures from or other use of amounts in the Fund shall be considered in allocating highway maintenance and construction funds under § 33.1-23.1 or apportioning Transportation Trust Fund funds under § 58.1-638, but shall be in addition thereto. The Board shall use the Fund to facilitate the financing of priority transportation projects as designated by the General Assembly; provided, however, that, at the discretion of the Commonwealth Transportation Board, funds allocated to projects within a transportation district may be allocated among projects within the same transportation district as needed to meet construction cash-flow needs.

C. Notwithstanding any other provision of this section, beginning July 1, 2007, no bonds, obligations, or other evidences of debt (the bonds) that expressly require as a source for debt service payments or for the repayment of such bonds the revenues of the Fund, shall be issued or entered into unless at the time of the issuance the revenues then in the Fund or reasonably anticipated to be deposited into the Fund pursuant to the law then in effect are by themselves sufficient to make ~~100%~~ *100 percent* of the contractually required debt service payments on all such bonds, including any interest related thereto and the retirement of such bonds.

§ 58.1-603. Imposition of sales tax.

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth, in the amount of ~~three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004~~ *4.75 percent*:

1. Of the gross sales price of each item or article of tangible personal property when sold at retail or distributed in this Commonwealth.

2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to such business.

3. Of the cost price of each item or article of tangible personal property stored in this

Commonwealth for use or consumption in this Commonwealth.

4. Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in § 58.1-602.

5. Of the gross sales of any services which are expressly stated as taxable within this chapter.

§ 58.1-604. Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of ~~three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004~~ *4.75 percent*:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property which has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).

2. Of the cost price of each item or article of tangible personal property stored outside this Commonwealth for use or consumption in this Commonwealth.

3. A transaction taxed under § 58.1-603 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under either section.

4. The use tax shall not apply with respect to the use of any article of tangible personal property brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use, while within this Commonwealth.

5. The use tax shall not apply to out-of-state mail order catalog purchases totaling $100 or less during any calendar year.

§ 58.1-604.1. Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for use in performing contracts.

In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools or other equipment brought, imported or caused to be brought into this Commonwealth for use in constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any part thereof. The rate of tax is ~~three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004,~~ *4.75 percent* on all tangible personal property except motor vehicles, which shall be taxed at the rate of three percent; aircraft, which shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of $1,000.

For purposes of this section the words "motor vehicle" means any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is pulled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment or any vehicle designed primarily for use in work off the highway.

The tax shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this Commonwealth bears to the total useful life thereof. For purposes of this section, the word "use" means use, storage, consumption and "stand-by" time occasioned by weather conditions, controversies or other causes. The tax shall be computed upon the basis of the relative time each item of equipment is in this Commonwealth rather than upon the basis of actual use. In the absence of satisfactory evidence as to the period of use intended in this Commonwealth, it will be presumed that such property will remain in this Commonwealth for the remainder of its useful life, which shall be determined in accordance with the experiences and practices of the building and construction trades.

A transaction taxed under § 58.1-604, 58.1-605, 58.1-1402, 58.1-1502, 58.1-1736 or 58.1-2402 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under any section.

§ 58.1-609.1. Governmental and commodities exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Fuels which are subject to the tax imposed by Chapter 22 (§ 58.1-2200 et seq.). Persons who are refunded any such fuel tax shall, however, be subject to the tax imposed by this chapter, unless such taxes would be specifically exempted pursuant to any provision of this section.

2. Motor vehicles, trailers, semitrailers, mobile homes and travel trailers.

3. Gas, electricity, or water when delivered to consumers through mains, lines, or pipes.

4. Tangible personal property for use or consumption by the Commonwealth, any political subdivision of the Commonwealth, or the United States. This exclusion shall not apply to sales and leases to privately owned financial and other privately owned corporations chartered by the United States. Further, this exemption shall not apply to tangible personal property which is acquired by the Commonwealth or any of its political subdivisions and then transferred to private businesses for their use in a facility or real property improvement to be used by a private entity or for nongovernmental purposes other than tangible personal property acquired by the Herbert H. Bateman Advanced Shipbuilding and Carrier Integration Center and transferred to a Qualified Shipbuilder as defined in the third enactment of Chapter 790 of the 1998 Acts of the General Assembly.

5. Aircraft subject to tax under Chapter 15 (§ 58.1-1500 et seq.).

6. Motor fuels ~~and alternative fuels~~ for use in a commercial watercraft, as defined in § 58.1-2201, upon which a fuel tax is refunded pursuant to § 58.1-2259.

7. Sales by a government agency of the official flags of the United States, the Commonwealth of Virginia, or of any county, city or town.

8. Materials furnished by the State Board of Elections pursuant to §§ 24.2-404 through 24.2-407.

9. Watercraft as defined in § 58.1-1401.

10. Tangible personal property used in and about a marine terminal under the supervision of the Virginia Port Authority for handling cargo, merchandise, freight and equipment. This exemption shall apply to agents, lessees, sublessees or users of tangible personal property owned by or leased to the Virginia Port Authority and to property acquired or used by the Authority or by a nonstock, nonprofit corporation that operates a marine terminal or terminals on behalf of the Authority.

11. Sales by prisoners confined in state correctional facilities of artistic products personally made by the prisoners as authorized by § 53.1-46.

12. Tangible personal property for use or consumption by the Virginia Department for the Blind and Vision Impaired or any nominee, as defined in § 51.5-60, of such Department.

13. [Expired.]

14. Tangible personal property sold to residents and patients of the Virginia Veterans Care Center at a canteen operated by the Department of Veterans Services.

15. Tangible personal property for use or consumption by any nonprofit organization whose members include the Commonwealth and other states and which is organized for the purpose of fostering interstate cooperation and excellence in government.

16. Tangible personal property purchased for use or consumption by any soil and conservation district which is organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1.

17. Tangible personal property sold or leased to Alexandria Transit Company, Greater Lynchburg Transit Company, GRTC Transit System, or Greater Roanoke Transit Company, or to any other transit company that is owned, operated, or controlled by any county, city, or town, or any combination thereof, that provides public transportation services, and/or tangible personal property sold or leased to any county, city, or town, or any combination thereof, that is transferred to any of the companies set forth in this subdivision owned, operated, or controlled by any county, city, or town, or any combination thereof, that provides public transportation services.

18. (Effective until July 1, 2017) Qualified products designated as Energy Star or WaterSense with a sales price of $2,500 or less per product purchased for noncommercial home or personal use. The exemption provided by this subdivision shall apply only to sales occurring during the four-day period that begins each year on the Friday before the second Monday in October and ends at midnight on the second Monday in October.

For the purposes of this exemption, an Energy Star qualified product is any dishwasher, clothes washer, air conditioner, ceiling fan, compact fluorescent light bulb, dehumidifier, programmable thermostat, or refrigerator, the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's requirements under the Energy Star program. For the purposes of this exemption, WaterSense qualified products are those that have been recognized as being water efficient by the WaterSense program sponsored by the U.S. Environmental Protection Agency as indicated by a WaterSense label.

§ 58.1-614. Vending machine sales.

A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his wholesale purchases for sale at retail from vending machines and shall be required to remit an amount based on ~~four and one-half percent through midnight on July 31, 2004, and five percent beginning on and after August 1, 2004,~~ *5.75 percent* of such wholesale purchases.

B. Notwithstanding the provisions of §§ 58.1-605 and 58.1-606, dealers making sales of tangible personal property through vending machines shall report and remit the one percent local sales and use tax computed as provided in subsection A ~~of this section~~.

C. The provisions of subsections A and B ~~of this section~~ shall not be applicable to vending machine operators all of whose machines are under contract to nonprofit organizations. Such operators shall report only the gross receipts from machines selling items for more than 10 cents *($0.10)* and shall be required to remit an amount based on a percentage of their remaining gross sales established by the Tax Commissioner to take into account the inclusion of sales tax.

D. Notwithstanding any other provisions in this section, when the Tax Commissioner determines that it is impractical to collect the tax in the manner provided by those sections, such dealer shall be required to remit an amount based on a percentage of gross receipts which takes into account the inclusion of the sales tax.

E. The provisions of this section shall not be applicable to any dealer who fails to maintain records satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through vending machines shall obtain a certificate of registration under § 58.1-613 in relevant form for each county or city in which he has machines.

§ 58.1-638. Disposition of state sales and use tax revenue; localities' share; Game Protection Fund.

A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax revenue collected under the preceding sections of this chapter.

1. The sales and use tax revenue generated by ~~the one-half~~ *a one* percent sales and use tax ~~increase enacted by the 1986 Special Session of the General Assembly~~ *rate* shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § 33.1-23.03:1.

Of the funds paid to the Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund as provided in this section; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund as provided in this section. The Fund's share of such net revenue shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

2. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Port Fund.

a. The Commonwealth Port Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it. Funds may be paid to any authority, locality or commission for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be allocated by the Commonwealth Transportation Board to the Board of Commissioners of the Virginia Port Authority to be used to support port capital needs and the preservation of existing capital needs of all ocean, river, or tributary ports within the Commonwealth.

c. Commonwealth Port Fund revenue shall be allocated by the Board of Commissioners to the Virginia Port Authority in order to foster and stimulate the flow of maritime commerce through the ports of Virginia, including but not limited to the ports of Richmond, Hopewell and Alexandria.

3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund. The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be allocated by the Commonwealth Transportation Board to the Virginia Aviation Board. The funds shall be allocated by the Virginia Aviation Board to any Virginia airport which is owned by the Commonwealth, a governmental subdivision thereof, or a private entity to which the public has access for the purposes enumerated in § 5.1-2.16, or is owned or leased by the Metropolitan Washington Airports Authority (MWAA), as follows:

Any new funds in excess of $12.1 million which are available for allocation by the Virginia Aviation

Board from the Commonwealth Transportation Fund, shall be allocated as follows: 60 percent to MWAA, up to a maximum annual amount of $2 million, and 40 percent to air carrier airports as provided in subdivision A 3 a. Except for adjustments due to changes in enplaned passengers, no air carrier airport sponsor, excluding MWAA, shall receive less funds identified under subdivision A 3 a than it received in fiscal year 1994-1995.

Of the remaining amount:

a. Forty percent of the funds shall be allocated to air carrier airports, except airports owned or leased by MWAA, based upon the percentage of enplanements for each airport to total enplanements at all air carrier airports, except airports owned or leased by MWAA. No air carrier airport sponsor, however, shall receive less than $50,000 nor more than $2 million per year from this provision.

b. Forty percent of the funds shall be allocated by the Aviation Board for air carrier and reliever airports on a discretionary basis, except airports owned or leased by MWAA.

c. Twenty percent of the funds shall be allocated by the Aviation Board for general aviation airports on a discretionary basis.

3a. There is hereby created in the Department of the Treasury a special nonreverting fund that shall be a part of the Transportation Trust Fund and that shall be known as the Commonwealth Space Flight Fund. The Commonwealth Space Flight Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it.

a. The amounts allocated to the Commonwealth Space Flight Fund pursuant to § 33.1-23.03:2 shall be allocated by the Commonwealth Transportation Board to the Board of Directors of the Virginia Commercial Space Flight Authority to be used to support the capital needs, maintenance, and operating costs of any and all facilities owned and operated by the Virginia Commercial Space Flight Authority.

b. Commonwealth Space Flight Fund revenue shall be allocated by the Board of Directors to the Virginia Commercial Space Flight Authority in order to foster and stimulate the growth of the commercial space flight industry in Virginia.

4. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Mass Transit Fund.

a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall be credited to the Fund. Funds may be paid to any local governing body, transportation district commission, or public service corporation for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be used to support the public transportation administrative costs and the costs borne by the locality for the purchase of fuels, lubricants, tires and maintenance parts and supplies for public transportation at a state share of 80 percent in 2002 and 95 percent in 2003 and succeeding years. These amounts may be used to support up to 95 percent of the local or nonfederal share of capital project costs for public transportation and ridesharing equipment, facilities, and associated costs. Capital costs may include debt service payments on local or agency transit bonds. The term "borne by the locality" means the local share eligible for state assistance consisting of costs in excess of the sum of fares and other operating revenues plus federal assistance received by the locality.

c. Commonwealth Mass Transit Fund revenue shall be allocated by the Commonwealth Transportation Board as follows:

(1) Funds for special programs, which shall include ridesharing, experimental transit, and technical assistance, shall not exceed 1.5 percent of the Fund.

(2) The Board may allocate these funds to any locality or planning district commission to finance up to 80 percent of the local share of all costs associated with the development, implementation, and continuation of ridesharing programs.

(3) Funds allocated for experimental transit projects may be paid to any local governing body, transportation district commission, or public corporation or may be used directly by the Department of Rail and Public Transportation for the following purposes:

(a) To finance up to 95 percent of the capital costs related to the development, implementation and promotion of experimental public transportation and ridesharing projects approved by the Board.

(b) To finance up to 95 percent of the operating costs of experimental mass transportation and ridesharing projects approved by the Board for a period of time not to exceed 12 months.

(c) To finance up to 95 percent of the cost of the development and implementation of any other project designated by the Board where the purpose of such project is to enhance the provision and use of public transportation services.

d. Funds allocated for public transportation promotion and operation studies may be paid to any local governing body, planning district commission, transportation district commission, or public transit

corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:

(1) At the approval of the Board to finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.

(2) To finance up to 50 percent of the local share of public transportation operations planning and technical study projects approved by the Board.

e. At least 73.5 percent of the Fund shall be distributed to each transit property in the same proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for the purposes specified in subdivision 4 b.

f. The remaining 25 percent shall be distributed for capital purposes on the basis of 95 percent of the nonfederal share for federal projects and 95 percent of the total costs for nonfederal projects. In the event that total capital funds available under this subdivision are insufficient to fund the complete list of eligible projects, the funds shall be distributed to each transit property in the same proportion that such capital expenditure bears to the statewide total of capital projects. Prior to the annual adoption of the Six-Year Improvement Program, the Commonwealth Transportation Board may allocate up to 20 percent of the funds in the Commonwealth Mass Transit Fund designated for capital purposes to transit operating assistance if operating funds for the next fiscal year are estimated to be less than the current fiscal year's allocation, to attempt to maintain transit operations at approximately the same level as the previous fiscal year.

g. There is hereby created in the Department of the Treasury a special nonreverting fund known as the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be established on the books of the Comptroller and consist of such moneys as are appropriated to it by the General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given, bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political subdivision, another public entity created by an act of the General Assembly, or a private entity as defined in § 56-557 and for purposes as enumerated in subdivision 4c of § 33.1-269 or expended by the Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of the Commonwealth Transit Capital Fund shall be used to support capital expenditures involving the establishment, improvement, or expansion of public transportation services through specific projects approved by the Commonwealth Transportation Board. Projects financed by the Commonwealth Transit Capital Fund shall receive local, regional or private funding for at least 20 percent of the nonfederal share of the total project cost.

5. Funds for Metro shall be paid by the Northern Virginia Transportation Commission (NVTC) to the Washington Metropolitan Area Transit Authority (WMATA) and be a credit to the Counties of Arlington and Fairfax and the Cities of Alexandria, Falls Church and Fairfax in the following manner:

a. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC. NVTC shall use 95 percent state aid for these payments.

b. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include 20 percent of annual local bus capital expenses. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.

Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and reliable source of revenue as defined by Public Law 96-184.

B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections C and D.

C. The localities' share of the net revenue distributable under this section among the counties and cities shall be apportioned by the Comptroller and distributed among them by warrants of the Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month during which the net revenue was received into the state treasury. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received into the state treasury during each month, and such distribution shall be made as soon as practicable after the close of each such month.

D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis of the latest yearly estimate of the population of cities and counties ages five

to 19, provided by the Weldon Cooper Center for Public Service of the University of Virginia. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who are domiciled in orphanages or charitable institutions or who are dependents living on any federal military or naval reservation or other federal property within the school division in which the institutions or federal military or naval reservation or other federal property is located. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for members of the military services who are under 20 years of age within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for individuals receiving services in state hospitals, state training centers, or mental health facilities, persons who are confined in state or federal correctional institutions, or persons who attend the Virginia School for the Deaf and the Blind within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who attend institutions of higher education within the school division in which the student's parents or guardians legally reside. To such estimate, the Department of Education shall add the population of students with disabilities, ages two through four and 20 through 21, as provided to the Department of Education by school divisions. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last estimate of school population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such estimate and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a two percent sales and use tax, up to an annual amount of $13 million, collected from the sales of hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the Game Protection Fund established under § 29.1-101 and shall be used, in part, to defray the cost of law enforcement. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the balance in the Capital Improvement Fund, established under § 29.1-101.01, is equal to or in excess of $35 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection Fund, established under § 29.1-101, in excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the balance in the Capital Improvement Fund is less than $35 million.

F. 1. Of the net revenue generated from the one-half percent increase in the rate of the state sales and use tax effective August 1, 2004, pursuant to enactments of the 2004 Special Session I of the General Assembly, the Comptroller shall transfer from the general fund of the state treasury to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1 an amount equivalent to one-half of the net revenue generated from such one-half percent increase as provided in this subdivision. The transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund under this subdivision shall be for one-half of the net revenue generated (and collected in the succeeding month) from such one-half percent increase for the month of August 2004 and for each month thereafter.

2. For the purposes of the Comptroller making the required transfers under subdivision 1, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund.

G. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

H. The term "net revenue," as used in this section, means the gross revenue received into the general

fund or the Transportation Trust Fund of the state treasury under the preceding sections of this chapter, less refunds to taxpayers.

§ 58.1-639. Transitional provisions.

A. To the extent of the ~~one-half~~ *0.75* percent increase in the state sales and use tax rate effective ~~August 1, 2004~~ *July 1, 2013*, enacted by the ~~2004 Special Session I~~ *2013 Session* of the Virginia General Assembly, the Tax Commissioner, upon application of the purchaser in accordance with regulations promulgated by the Commissioner, shall have the authority to refund state sales or use taxes paid on purchases of tangible personal property made pursuant to bona fide real estate construction contracts, contracts for the sale of tangible personal property, and leases, provided that the real estate construction contract, contract for the sale of tangible personal property or lease is entered into prior to the date of enactment of such increase in the state sales and use tax rate; and further provided that the date of delivery of the tangible personal property is on or before ~~October 31, 2004~~ *September 30, 2013*. The term "bona fide contract," when used in this section in relation to real estate construction contracts, shall include but not be limited to those contracts which are entered into prior to the enactment of such increase in the state sales and use tax rate, provided that such contracts include plans and specifications.

B. Notwithstanding the foregoing ~~October 31, 2004~~ *September 30, 2013*, delivery date requirement, with respect to bona fide real estate construction contracts which contain a specific and stated date of completion, the date of delivery of such tangible personal property shall be on or before the completion date of the applicable project.

C. Applications for refunds pursuant to this section shall be made in accordance with the provisions of § 58.1-1823. Interest computed in accordance with § 58.1-1833 shall be added to the tax refunded pursuant to this section.

§ 58.1-2201. Definitions.

As used in this chapter, unless the context requires otherwise:

~~"Alternative fuel" means a combustible gas, liquid or other energy source that can be used to generate power to operate a highway vehicle and that is neither a motor fuel nor electricity used to recharge an electric motor vehicle.~~

"Assessment" means a written determination by the Department of the amount of taxes owed by a taxpayer. Assessments made by the Department shall be deemed to be made when a written notice of assessment is delivered to the taxpayer by the Department or is mailed to the taxpayer at the last known address appearing in the Commissioner's files.

~~"Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation jet fuel in any fiscal year and is licensed pursuant to Article 2 (§ 58.1-2204 et seq.) of this chapter.~~

~~"Aviation fuel" means aviation gasoline or aviation jet fuel.~~

~~"Aviation gasoline" means fuel designed for use in the operation of aircraft other than jet aircraft, and sold or used for that purpose.~~

~~"Aviation jet fuel" means fuel designed for use in the operation of jet or turbo-prop aircraft, and sold or used for that purpose.~~

"Blended fuel" means a mixture composed of ~~gasoline or~~ diesel fuel and another liquid, other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

"Blender" means a person who produces blended fuel outside the terminal transfer system.

~~"Bonded aviation jet fuel" means aviation jet fuel held in bonded storage under United States Customs Law and delivered into a fuel tank of aircraft operated by certificated air carriers on international flights.~~

"Bonded importer" means a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in which (i) the state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state; (ii) the supplier of the fuel is not an elective supplier; or (iii) the supplier of the fuel is not a permissive supplier.

"Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

"Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle, watercraft, or aircraft.

~~"Bulk user of alternative fuel" means a person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.~~

"Commercial watercraft" means a watercraft employed in the business of commercial fishing, transporting persons or property for compensation or hire, or any other trade or business unless the watercraft is used in an activity of a type generally considered entertainment, amusement, or recreation. The definition shall include a watercraft owned by a private business and used in the conduct of its own

business or operations, including but not limited to the transport of persons or property.

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

"Corporate or partnership officer" means an officer or director of a corporation, partner of a partnership, or member of a limited liability company, who as such officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax collection, accounting, or remitting obligations.

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

"Designated inspection site" means any state highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Commissioner or his designee to be used as a fuel inspection site.

"Destination state" means the state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use. The term shall not include a tribal reservation of any recognized Native American tribe.

"Diesel fuel" means any liquid that is suitable for use as a fuel in a diesel-powered highway vehicle or watercraft. The term shall include undyed #1 fuel oil and undyed #2 fuel oil, but shall not include gasoline ~~or aviation jet fuel~~.

"Distributor" means a person who acquires motor fuel from a supplier or from another distributor for subsequent sale.

"Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C. § 4082.

"Elective supplier" means a supplier who (i) is required to be licensed in the Commonwealth and (ii) elects to collect the tax due the Commonwealth on motor fuel that is removed at a terminal located in another state and has Virginia as its destination state.

~~"Electric motor vehicle" means a motor vehicle that uses electricity as its only source of motive power.~~

"End seller" means the person who sells fuel to the ultimate user of the fuel.

"Export" means to obtain motor fuel in Virginia for sale or distribution in another state, territory, or foreign country. Motor fuel delivered out-of-state by or for the seller constitutes an export by the seller, and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

"Exporter" means a person who obtains motor fuel in Virginia for sale or distribution in another state, territory, or foreign country.

"Fuel" includes motor fuel ~~and alternative fue~~l.

~~"Fuel alcohol" means methanol or fuel grade ethanol.~~

~~"Fuel alcohol provider" means a person who (i) produces fuel alcohol or (ii) imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, a tank wagon, or a railroad tank car.~~

~~"Gasohol" means a blended fuel composed of gasoline and fuel grade ethanol.~~

~~"Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method; (ii) a petroleum product component of gasoline, such as naphtha, reformate, or toluene; (iii) gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an aircraft engine.~~

"Governmental entity" means (i) the Commonwealth or any political subdivision thereof or (ii) the United States or its departments, agencies, and instrumentalities.

"Gross gallons" means an amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

~~"Heating oil" means any combustible liquid, including but not limited to dyed #1 fuel oil, dyed #2 fuel oil, and kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial processing purposes.~~

"Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.

"Highway vehicle" means a self-propelled vehicle designed for use on a highway.

"Import" means to bring motor fuel into Virginia by any means of conveyance other than in the fuel supply tank of a highway vehicle. Motor fuel delivered into Virginia from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into Virginia from out-of-state by or for the purchaser constitutes an import by the purchaser.

"Importer" means a person who obtains motor fuel outside of Virginia and brings that motor fuel into Virginia by any means of conveyance other than in the fuel tank of a highway vehicle. For purposes of this chapter, a motor fuel transporter shall not be considered an importer.

"In-state-only supplier" means (i) a supplier who is required to have a license and who elects not to collect the tax due the Commonwealth on motor fuel that is removed by that supplier at a terminal located in another state and has Virginia as its destination state or (ii) a supplier who does business only in Virginia.

"Licensee" means any person licensed by the Commissioner pursuant to Article 2 (§ 58.1-2204 et seq.) ~~of this chapter or § 58.1-2244~~.

"Liquid" means any substance that is liquid above its freezing point.

"Motor fuel" means ~~gasoline,~~ diesel fuel~~,~~ *and* blended fuel~~, and aviation fuel~~.

"Motor fuel transporter" means a person who transports motor fuel for hire by means of a pipeline, a tank wagon, a transport truck, a railroad tank car, or a marine vessel.

"Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch.

"Occasional importer" means any person who (i) imports motor fuel by any means outside the terminal transfer system and (ii) is not required to be licensed as a bonded importer.

"Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a supplier's license under this chapter.

"Person" means any individual; firm; cooperative; association; corporation; limited liability company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy; club, society or other group or combination acting as a unit; or public body, including but not limited to the Commonwealth, any other state, and any agency, department, institution, political subdivision or instrumentality of the Commonwealth or any other state.

"Position holder" means a person who holds an inventory position of motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds an "inventory position of motor fuel" when he has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

"Principal" means (i) if a partnership, all its partners; (ii) if a corporation, all its officers, directors, and controlling direct or indirect owners; (iii) if a limited liability company, all its members; and (iv) or an individual.

~~"Provider of alternative fuel" means a person who (i) acquires alternative fuel for sale or delivery to a bulk user or a retailer; (ii) maintains storage facilities for alternative fuel, part or all of which the person sells to someone other than a bulk user or a retailer to operate a highway vehicle; (iii) sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle; or (iv) imports alternative fuel into Virginia, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for sale or use by that person to operate a highway vehicle.~~

"Rack" means a facility that contains a mechanism for delivering motor fuel from a refinery, terminal, or bulk plant into a transport truck, railroad tank car, or other means of transfer that is outside the terminal transfer system.

"Refiner" means any person who owns, operates, or otherwise controls a refinery.

"Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

"Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or other means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

"Retailer" means a person who (i) maintains storage facilities for motor fuel and (ii) sells the fuel at retail or dispenses the fuel at a retail location.

~~"Retailer of alternative fuel" means a person who (i) maintains storage facilities for alternative fuel and (ii) sells or dispenses the fuel at retail, to be used to generate power to operate a highway vehicle.~~

"Supplier" means (i) a position holder, or (ii) a person who receives motor fuel pursuant to a two-party exchange. A licensed supplier includes a licensed elective supplier and licensed permissive supplier.

"System transfer" means a transfer ~~(i)~~ of motor fuel within the terminal transfer system ~~or (ii) of fuel grade ethanol by transport truck or railroad tank car~~.

"Tank wagon" means a straight truck or straight truck/trailer combination designed or used to carry fuel and having a capacity of less than 6,000 gallons.

"Terminal" means a motor fuel storage and distribution facility (i) to which a terminal control number has been assigned by the Internal Revenue Service, (ii) to which motor fuel is supplied by pipeline or marine vessel, and (iii) from which motor fuel may be removed at a rack.

"Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

"Terminal transfer system" means a motor fuel distribution system consisting of refineries, pipelines,

marine vessels, and terminals, and which is a "bulk transfer/terminal system" under 26 C.F.R. Part 48.4081-1.

"Transmix" means (i) the buffer or interface between two different products in a pipeline shipment or (ii) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

"Transport truck" means a tractor truck/semitrailer combination designed or used to transport cargoes of motor fuel over a highway.

"Trustee" means a person who (i) is licensed as a supplier, an elective supplier, or a permissive supplier and receives tax payments from and on behalf of a licensed or unlicensed distributor, or other person pursuant to § 58.1-2231 ~~or~~ ~~(ii)~~ ~~is~~ ~~licensed~~ ~~as~~ ~~a~~ ~~provider~~ ~~of~~ ~~alternative~~ ~~fuel~~ ~~and~~ ~~receives~~ ~~tax payments~~ ~~from~~ ~~and~~ ~~on~~ ~~behalf~~ ~~of~~ ~~a~~ ~~bulk~~ ~~user~~ ~~of~~ ~~alternative~~ ~~fuel,~~ ~~retailer~~ ~~of~~ ~~alternative~~ ~~fuel~~ ~~or~~ ~~other person~~ ~~pursuant~~ ~~to~~ ~~§ 58.1-2252~~.

"Two-party exchange" means a transaction in which fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement, which transaction (i) includes a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator and (ii) is completed prior to removal of the product from the terminal by the receiving exchange partner.

"Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental Protection Agency or Internal Revenue Service fuel-dyeing requirements.

"Use" means the actual consumption or receipt of motor fuel by any person into a highway vehicle, aircraft, or watercraft.

"Watercraft" means any vehicle used on waterways.

§ 58.1-2204. Persons required to be licensed.

A. A person shall obtain a license issued by the Commissioner before conducting the activities of:

1. A refiner, who shall be licensed as a supplier;

2. A supplier;

3. A terminal operator;

4. An importer;

5. An exporter;

6. A blender;

7. A motor fuel transporter;

~~8.~~ ~~An~~ ~~aviation~~ ~~consumer~~;

~~9~~ *8*. A bonded importer; *or*

~~10~~ *9*. An elective supplier~~;~~ ~~or~~

~~11. A~~ ~~fuel~~ ~~alcohol~~ ~~provider~~.

B. A person who is engaged in more than one activity for which a license is required shall have a separate license for each activity, except as provided in subsection C.

C. 1. A person who is licensed as a supplier shall not be required to obtain a separate license for any other activity for which a license is required and shall be considered to have a license as a distributor.

2. A person who is licensed as an occasional importer shall not be required to obtain a license as a distributor.

3. A person who is licensed as a distributor shall not be required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or permissive supplier. Such licensed distributor shall not be required to obtain a separate license as an exporter.

4. A person who is licensed as a distributor or a blender shall not be required to obtain a separate license as a motor fuel transporter if he does not transport motor fuel for others for hire.

§ 58.1-2208. License application procedure.

A. To obtain a license under this article, an applicant shall file an application with the Commissioner on a form provided by the Commissioner. An application shall include the applicant's name, address, federal employer identification number, and any other information required by the Commissioner.

B. An applicant for a license as a motor fuel transporter, supplier, terminal operator, importer, blender, *or* distributor~~,~~ ~~or~~ ~~aviation~~ ~~consumer~~ shall satisfy the following requirements:

1. If the applicant is a corporation, the applicant shall either be incorporated in the Commonwealth or authorized to transact business in the Commonwealth;

2. If the applicant is a limited liability company, the applicant shall be organized in the Commonwealth or authorized to transact business in the Commonwealth;

3. If the applicant is a limited liability partnership, the applicant shall either be formed in the Commonwealth or authorized to transact business in the Commonwealth; or

4. If the applicant is an individual or a general partnership, the applicant shall designate an agent for service of process and provide the agent's name and address.

C. An applicant for a license as a supplier, terminal operator, blender, or permissive supplier shall have a federal certificate of registry issued under 26 U.S.C. § 4101 that authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant who

is required to have a federal certificate of registry shall include the registration number of the certificate on the application for a license under this section. An applicant for a license as an importer, an exporter, or a distributor who has a federal certificate of registry issued under 26 U.S.C. § 4101 shall include the registration number of the certificate on the application for a license under this section.

D. An applicant for a license as an importer or distributor shall list on the application each state from which the applicant intends to import motor fuel and, if required by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or registration number of that state. A licensee who intends to import motor fuel from a state not listed on his application for an importer's license or a distributor's license shall provide the Commissioner written notice of such action before importing motor fuel from that state. The notice shall include the information that is required on the license application.

E. An applicant for a license as an exporter shall designate an agent located in Virginia for service of process and provide the agent's name and address. An applicant for a license as an exporter or distributor shall list on the application each state to which the applicant intends to export motor fuel received in Virginia by means of a transfer that is outside the terminal transfer system and, if required by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or registration number of that state. A licensee who intends to export motor fuel to a state not listed on his application for an exporter's license or a distributor's license shall provide the Commissioner written notice of such action before exporting motor fuel to that state. The notice shall include the information required on the license application.

§ 58.1-2211. Bond or certificate of deposit requirements.

A. An applicant for a license as a terminal operator, supplier, importer, blender, permissive supplier, *or* distributor~~, or aviation consumer~~ shall file with the Commissioner a bond or certificate of deposit. The bond or certificate of deposit shall be conditioned upon compliance with the requirements of this chapter, be payable to the Commonwealth, and be in the form required by the Commissioner. The amount of the bond or certificate of deposit shall be as follows:

1. For an applicant for a license as a (i) terminal operator, (ii) supplier who is a position holder or a person who receives motor fuel pursuant to a two-party exchange, (iii) bonded importer, or (iv) permissive supplier, the amount shall be $2,000,000; and

2. For an applicant for a license as ~~(i)~~ a ~~supplier who is a fuel alcohol provider but is neither a position holder nor a person who receives motor fuel pursuant to a two-party exchange;~~ (~~ii~~ *i*) an occasional importer; (~~iii~~ *ii*) a distributor; *or* (~~iv~~ *iii*) a blender~~; or (v) an aviation consumer~~, the amount shall be three times the applicant's average expected monthly tax liability under this chapter, as determined by the Commissioner. The amount shall not be less than $2,000 nor more than $300,000.

B. An applicant for a license both as a distributor and as a bonded importer shall file only the bond or certificate of deposit required of a bonded importer. An applicant for two or more of the licenses listed in subdivision A 2 may file one bond or certificate of deposit that covers the combined liabilities of the applicant under all the activities, in which event the amount of the bond or certificate of deposit for the combined activities shall not exceed $300,000.

C. When notified to do so by the Commissioner, a person who has filed a bond or certificate of deposit and who holds a license listed in subdivision A 2 shall file an additional bond or certificate of deposit in the amount required by the Commissioner. The person shall file the additional bond or certificate of deposit within thirty days after receiving the notice from the Commissioner. However, the amount of the initial bond or certificate of deposit and any additional bond or certificate of deposit filed by the licensee shall not exceed $300,000.

Any licensee who disagrees with the Commissioner's decision requiring new or additional security shall be entitled to a hearing. Such matter shall, within thirty days, be scheduled for a prompt hearing before the Commissioner after written request for such hearing is received by the Commissioner.

§ 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~~ *A.* (Contingent expiration date) There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on diesel fuel.

~~B~~ *A.* (Contingent effective date) There is hereby levied a tax at the rate of sixteen cents per gallon on diesel fuel.

~~C~~ *B.* ~~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, 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, 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, along with any penalties and interest that may accrue.~~

~~F.~~ *C.* 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)~~,~~ *and* blended fuel~~, and heating oil~~ sold and delivered or used in the Commonwealth.

§ 58.1-2218. Point of imposition of motor fuels tax.

The tax levied pursuant to § 58.1-2217 is imposed at the point that the motor fuel is:

1. Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by 26 U.S.C. § 4081;

2. Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by 26 U.S.C. § 4081;

3. Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in Virginia and would have been subject to the federal excise tax imposed by 26 U.S.C. § 4081 if it had been removed at a terminal or bulk plant rack in Virginia instead of being imported;

~~4. If the motor fuel is gasohol, (i) removed from a terminal or distribution facility, unless the removed fuel is received by a supplier for subsequent sale or (ii) imported into Virginia outside the terminal transfer system by a means other than a marine vessel, a transport truck, or a railroad tank car;~~

~~5~~ *4.* If the motor fuel is blended fuel, made within Virginia or imported into Virginia; or

~~6~~ *5.* Transferred within the terminal transfer system and, upon transfer, is subject to the federal excise tax imposed by 26 U.S.C. § 4081.

§ 58.1-2222. Liability for tax on blended fuel.

A. The tax imposed pursuant to § 58.1-2217 at the point that blended fuel is made in Virginia shall be payable by the blender. The number of gallons of blended fuel on which the tax is payable is the difference between the number of gallons of blended fuel made and the number of gallons of previously taxed motor fuel used to make the blended fuel.

B. The tax imposed pursuant to § 58.1-2217 at the point that blended fuel is imported to Virginia shall be payable by the importer.

C. ~~The following blended fuel~~ *An in-line-blend made by combining a liquid with undyed diesel fuel as the fuel is delivered at a terminal rack into the motor fuel storage compartment of a transport truck or a tank wagon* shall be considered to have been made by the supplier of ~~gasoline or~~ undyed diesel fuel used in the blend~~:~~.

~~1. An in-line-blend made by combining a liquid with gasoline or undyed diesel fuel as the fuel is delivered at a terminal rack into the motor fuel storage compartment of a transport truck or a tank wagon; and~~

~~2. A kerosene splash-blend made when kerosene is delivered into a motor fuel storage compartment of a transport truck or a tank wagon and undyed diesel fuel is also delivered into the same storage compartment, if the buyer of the kerosene notified the supplier before or at the time of delivery that the kerosene would be used to make a splash-blend.~~

§ 58.1-2226. Exemptions from tax.

No tax shall be levied or collected pursuant to this chapter on:

1. Motor fuel sold and delivered to a governmental entity for the exclusive use by the governmental entity. This exemption shall not apply with respect to fuel sold or delivered to any person operating

under contract with the governmental entity;

2. Motor fuel sold and delivered to a nonprofit charitable organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air ambulance services for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft;

~~3. Bonded aviation jet fuel;~~

4 *3*. Dyed diesel fuel, except as provided in subdivision A 1 of § 58.1-2225; *or*

~~5~~ *4*. Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on the fuel at the rate of the motor fuel's destination state~~; or~~

~~6. Heating oil, as defined in § 58.1-2201~~.

§ 58.1-2228. Exempt access cards; exempt access codes.

A. A licensed distributor~~,~~ *or* licensed importer ~~or, in the case of aviation jet fuel, a licensed aviation consumer~~ shall only remove motor fuel from a terminal by means of a supplier-issued exempt access card or exempt access code if ~~(i)~~ the motor fuel will be resold to a governmental entity or an organization exempt from tax under subdivision 2 of § 58.1-2226 for a purpose that is exempt from the tax ~~or (ii) the aviation jet fuel will be used by the aviation consumer or resold to a licensed aviation consumer~~. The use of such exempt access card or exempt access code shall constitute a representation by the licensed distributor~~,~~ *or* licensed importer ~~or licensed aviation consumer~~ that the removal of the motor fuel is permitted. A supplier shall be authorized to rely on this representation. A licensed distributor or licensed importer who does not resell motor fuel removed from a terminal by means of an exempt access card or exempt access code to an exempt governmental unit or an organization exempt from tax under subdivision 2 of § 58.1-2226 is liable for any tax due on the fuel. ~~A licensed distributor or licensed importer who does not resell aviation jet fuel removed from a terminal by means of an exempt access card or exempt access code to a licensed aviation consumer is liable for any tax due on the aviation jet fuel.~~

B. A supplier who issues to, or authorizes another person to issue to, another person an exempt access card or an exempt access code that enables the person to buy motor fuel without paying the tax on the fuel shall determine if the person is exempt from the tax ~~or, in the case of aviation jet fuel, is a licensed aviation consumer allowed to purchase aviation jet fuel without payment of tax~~. A supplier is liable for tax due on motor fuel purchased at retail by use of an exempt access card or an exempt access code issued to a person who is not exempt from the tax ~~or, in the case of aviation jet fuel, is not a licensed aviation consumer allowed to purchase aviation jet fuel without payment of tax~~.

C. A person to whom an exempt access card or exempt access code is issued for use at a terminal is liable for any tax due on fuel purchased with the exempt access card or exempt access code for a purpose that is not exempt. A person who misuses an exempt access card or exempt access code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel. ~~The provisions of this subsection shall apply to the misuse of a card or code that allows a person to purchase aviation jet fuel without paying the tax.~~

D. The tax liability imposed by this section shall be in addition to any other penalty imposed pursuant to this chapter.

§ 58.1-2230. When tax return and payment are due.

A. A return for the tax on motor fuel ~~and gasohol~~ levied by this chapter shall be filed with the Commissioner and be in the form and contain the information required by the Commissioner. The return and the payment for the tax on motor fuel levied by this chapter shall be due for each full month in a calendar year. Any return and payment required under this section shall be deemed timely filed if received by the Commissioner by midnight of the twentieth day of the second month succeeding the month for which the return and payment are due. Each return shall report tax liabilities that accrue in the month for which the return is due.

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

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

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

C. The following shall file a monthly return as required by this section:

1. A refiner;

2. A terminal operator;

3. A supplier;

4. A distributor;

5. An importer to include a bonded importer;

6. A blender; *and*

~~7. An aviation consumer;~~

~~8~~ *7.* An elective supplier~~; and~~

~~9. A fuel alcohol provider~~.

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

E. Persons incurring liability under § 58.1-2225 for the backup tax on motor fuel shall file a return together with a payment of tax due within 30 calendar days of incurring such liability.

§ 58.1-2232. Notice of cancellation or reissuance of licenses; effect of notice.

A. If the Commissioner cancels the license of a distributor~~,~~ *or* importer, ~~or aviation consumer,~~ the Commissioner shall notify all suppliers of the cancellation. If the Commissioner issues a license to a distributor~~,~~ *or* importer ~~or aviation consumer~~ whose license was previously canceled, the Commissioner shall notify all suppliers of the issuance.

B. A supplier who sells motor fuel to a distributor~~,~~ *or* importer ~~or aviation consumer~~ after receiving notice from the Commissioner that the Commissioner has canceled the distributor's~~,~~ *or* importer's ~~or aviation consumer's~~ license shall be jointly and severally liable with the distributor~~,~~ *or* importer ~~or aviation consumer~~ for any tax due on motor fuel the supplier sells to the distributor~~,~~ *or* importer ~~or aviation consumer~~ after receiving the notice; however, the supplier shall not be liable for tax due on motor fuel sold to a previously unlicensed distributor~~,~~ *or* importer ~~or aviation consumer~~ after the supplier receives notice from the Commissioner that the Commissioner has issued another license to the distributor~~,~~ *or* importer ~~or aviation consumer~~.

C. If the Commissioner cancels the license of a supplier, the Commissioner shall notify all licensed distributors, exporters, *and* importers ~~and aviation consumers~~ of the cancellation. If the Commissioner issues a license to a supplier whose license was previously canceled, the Commissioner shall notify all licensed distributors, exporters, *and* importers ~~and aviation consumers~~ of the issuance.

D. A licensed distributor, exporter, *or* importer~~, or aviation consumer~~ who purchases motor fuel from a supplier after receiving notice from the Commissioner that the Commissioner has canceled the supplier's license shall be jointly and severally liable with the supplier for any tax due on motor fuel purchased from the supplier after receiving the notice; however, the licensed distributor, exporter, *or* importer~~, or aviation consumer~~ shall not be liable for tax due on motor fuel purchased from a previously unlicensed supplier after the licensee receives notice from the Commissioner that the Commissioner has issued another license to the supplier.

§ 58.1-2233. Deductions; percentage discount.

A. A licensed importer who removes motor fuel from a terminal rack of a permissive or an elective supplier or licensed distributor may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel that the licensee received from the supplier and resold to a governmental entity, ~~or resold to an organization described in subdivision 2 of § 58.1-2226 for use in the operation of an aircraft~~ if, when removing the fuel, the licensee used an exempt access card or exempt access code specified by the supplier to notify the supplier of the licensee's intent to resell the fuel in an exempt sale.

~~B. A licensed importer who removes motor fuel from a terminal rack of a permissive supplier, an elective supplier, or a licensed distributor may deduct from the amount of tax otherwise payable to a supplier the amount calculated on aviation jet fuel that the licensee received from the supplier and resold to a licensed aviation consumer if, when removing the fuel, the licensee used an exempt access card or exempt access code specified by the supplier to notify the supplier of the licensee's intent to resell the aviation jet fuel to a licensed aviation consumer.~~

~~C~~ *B.* A licensed distributor who pays the tax due a supplier by the date the supplier is required to remit the tax to this Commonwealth may deduct from the amount due a discount of one percent of the amount of tax payable. A licensed importer who (i) removes motor fuel from a terminal rack of a permissive or an elective supplier and (ii) pays the tax due to the supplier by the date the supplier is required to remit the tax to the Commonwealth may deduct from the amount due a discount of one percent of the amount of tax payable. A supplier shall not directly or indirectly deny this discount to a licensed distributor or licensed importer who pays the tax due the supplier by the date the supplier is required to remit the tax to the Commonwealth.

§ 58.1-2234. Monthly reconciling returns.

A. A licensed distributor or a licensed importer who deducts exempt sales under subsection A of § 58.1-2233 ~~or sales of aviation jet fuel to a licensed aviation consumer under subsection B of § 58.1-2233~~ when paying tax to a supplier shall file a monthly reconciling return for the exempt sales ~~and sales to a licensed aviation consumer~~. The return shall list the following information and any other information required by the Commissioner:

1. The number of gallons for which a deduction was taken during the month, by supplier; *and*

2. The number of gallons sold in exempt sales during the month, by type of sale, and the purchasers of the fuel in the exempt sales~~; and~~

~~3. The number of gallons of aviation jet fuel sold without collection of the tax during the month, and the purchasers of the fuel~~.

B. If the number of gallons for which a licensed distributor or licensed importer takes a deduction during a month exceeds the number of exempt gallons sold ~~or, in the case of aviation jet fuel, the number of gallons sold without collection of the tax~~, the licensed distributor or licensed importer shall pay tax on the difference at the rate imposed by § 58.1-2217. The licensed distributor or licensed importer shall not be allowed a percentage discount on any tax payable under this subsection.

C. If the number of gallons for which a licensed distributor or licensed importer takes a deduction during a month is less than the number of exempt gallons sold ~~or, in the case of aviation jet fuel, is less than the number of gallons sold without collection of the tax~~, the Commissioner shall refund the amount of tax paid on the difference. The Commissioner shall reduce the amount of the refund by the amount of the percentage discount received on the fuel.

§ 58.1-2235. Information required on return filed by supplier.

A. A return of a supplier shall list all of the following information and any other information required by the Commissioner:

1. The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by type of fuel, seller, point of origin, destination state, and carrier;

2. The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of fuel, person receiving the fuel, terminal code, and carrier;

3. The number of gallons of motor fuel removed during the month for export, sorted by type of fuel, person receiving the fuel, terminal code, destination state, and carrier;

4. The number of gallons of motor fuel removed during the month from a terminal located in another state for conveyance to Virginia, as indicated on the shipping document for the fuel, sorted by type of fuel, person receiving the fuel, terminal code, and carrier;

5. The number of gallons of motor fuel the supplier sold during the month to the following, sorted by type of fuel, exempt entity, person receiving the fuel, terminal code, and carrier:

a. A governmental entity whose use of fuel is exempt from the tax;

~~b. A licensed aviation consumer purchasing aviation jet fuel;~~

~~c~~ *b*. A licensed distributor or importer who resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as indicated by the distributor or importer;

~~d. A licensed distributor or importer who resold aviation jet fuel to a licensed aviation consumer as indicated by the distributor or importer;~~

~~e~~ *c*. A licensed exporter who resold the motor fuel to a person whose use of the fuel is exempt from tax in the destination state, as indicated by the exporter;

~~f~~ *d*. A nonprofit charitable organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air ambulance services for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft; and

~~g~~ *e*. A licensed distributor or importer who resold the motor fuel to a nonprofit charitable organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air ambulance services for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft; and

6. The amount of discounts allowed under subsection C of § 58.1-2233 on motor fuel sold during the month to licensed distributors or licensed importers.

B. Suppliers shall not require information identifying who purchased exempt fuel from persons licensed under this chapter.

§ 58.1-2259. Fuel uses eligible for refund.

A. A refund of the tax paid for the purchase of fuel in quantities of five gallons or more at any time shall be granted in accordance with the provisions of § 58.1-2261 to any person who establishes to the satisfaction of the Commissioner that such person has paid the tax levied pursuant to this chapter upon any fuel:

1. Sold and delivered to a governmental entity for its exclusive use;

2. Used by a governmental entity, provided persons operating under contract with a governmental entity shall not be eligible for such refund;

3. Sold and delivered to an organization described in subdivision 2 of § 58.1-2226 ~~or subdivision 2 of §~~ 58.1-2250 for its exclusive use in the operation of an aircraft;

4. Used by an organization described in subdivision 2 of § 58.1-2226 ~~or subdivision 2 of § 58.1-2250~~ for its exclusive use in the operation of an aircraft, provided persons operating under contract with such an organization shall not be eligible for such refund;

5. Purchased by a licensed exporter and subsequently transported and delivered by such licensed exporter to another state for sales or use outside the boundaries of the Commonwealth if the tax applicable in the destination state has been paid, provided a refund shall not be granted pursuant to this section on any fuel which is transported and delivered outside of the Commonwealth in the fuel supply tank of a highway vehicle or an aircraft;

6. Used by any person performing transportation under contract or lease with any transportation district for use in a highway vehicle controlled by a transportation district created under the Transportation District Act of 1964 (§ 15.2-4500 et seq.) and used in providing transit service by the transportation district by contract or lease, provided the refund shall be paid to the person performing such transportation;

7. Used by any private, nonprofit agency on aging, designated by the Department for Aging and Rehabilitative Services, providing transportation services to citizens in highway vehicles owned, operated or under contract with such agency;

8. Used in operating or propelling highway vehicles owned by a nonprofit organization that provides specialized transportation to various locations for elderly or disabled individuals to secure essential services and to participate in community life according to the individual's interest and abilities;

9. Used in operating or propelling buses owned and operated by a county or the school board thereof while being used to transport children to and from public school or from school to and from educational or athletic activities;

10. Used by buses owned or solely used by a private, nonprofit, nonreligious school while being used to transport children to and from such school or from such school to and from educational or athletic activities;

11. Used by any county or city school board or any private, nonprofit, nonreligious school contracting with a private carrier to transport children to and from public schools or any private, nonprofit, nonreligious school, provided the tax shall be refunded to the private carrier performing such transportation;

12. Used in operating or propelling the equipment of volunteer firefighting companies and of volunteer rescue squads within the Commonwealth used actually and necessarily for firefighting and rescue purposes;

13. Used in operating or propelling motor equipment belonging to counties, cities and towns, if actually used in public activities;

14. Used for a purpose other than in operating or propelling highway vehicles, watercraft or aircraft;

15. Used off-highway in self-propelled equipment manufactured for a specific off-road purpose, which is used on a job site and the movement of which on any highway is incidental to the purpose for which it was designed and manufactured;

16. Proven to be lost by accident, including the accidental mixing of (i) dyed diesel fuel with tax-paid motor fuel, (ii) gasoline with diesel fuel, or (iii) undyed diesel fuel with dyed kerosene, but excluding fuel lost through personal negligence or theft;

17. Used in operating or propelling vehicles used solely for racing other vehicles on a racetrack;

18. Used in operating or propelling unlicensed highway vehicles and other unlicensed equipment used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or lessee of such vehicles and not operated on or over any highway for any purpose other than to move it in the manner and for the purpose mentioned. The amount of refund shall be equal to the amount of the taxes paid less one-half cent per gallon on such fuel so used which shall be paid by the Commissioner into the state treasury to the credit of the Virginia Agricultural Foundation Fund;

19. Used in operating or propelling commercial watercraft. The amount of refund shall be equal to the amount of the taxes paid less one and one-half cents per gallon on such fuel so used which shall be paid by the Commissioner into the state treasury to be credited as provided in subsection ~~D~~ *C* of § 58.1-2289. If any applicant so requests, the Commissioner shall pay into the state treasury, to the credit of the Game Protection Fund, the entire tax paid by such applicant for the purposes specified in subsection ~~D~~ *C* of § 58.1-2289. If any applicant who is an operator of commercial watercraft so requests, the Commissioner shall pay into the state treasury, to the credit of the Marine Fishing Improvement Fund, the entire tax paid by such applicant for the purposes specified in § 28.2-208;

20. Used in operating stationary engines, or pumping or mixing equipment on a highway vehicle if

the fuel used to operate such equipment is stored in an auxiliary tank separate from the fuel tank used to propel the highway vehicle, and the highway vehicle is mechanically incapable of self-propulsion while fuel is being used from the auxiliary tank; or

21. Used in operating or propelling recreational and pleasure watercraft.

B. 1. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete highway vehicle, or a bulk feed delivery truck, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 35 percent of the tax paid on such fuel. For purposes of this section, a "bulk feed delivery truck" means bulk animal feed delivery trucks utilizing power take-off (PTO) driven auger or air feed discharge systems for off-road deliveries of animal feed.

2. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

C. Any person purchasing any fuel on which tax imposed pursuant to this chapter has been paid may apply for a refund of the tax if such fuel was consumed by a highway vehicle used in operating an urban or suburban bus line or a taxicab service. This refund also applies to a common carrier of passengers which has been issued a certificate pursuant to § 46.2-2075 or 46.2-2099.4 providing regular route service over the highways of the Commonwealth. No refund shall be granted unless the majority of the passengers using such bus line, taxicab service or common carrier of passengers do so for travel of a distance of not more than 40 miles, one way, in a single day between their place of abode and their place of employment, shopping areas or schools.

If the applicant for a refund is a taxicab service, he shall hold a valid permit from the Department to engage in the business of a taxicab service. No applicant shall be denied a refund by reason of the fee arrangement between the holder of the permit and the driver or drivers, if all other conditions of this section have been met.

Under no circumstances shall a refund be granted more than once for the same fuel. The amount of refund under this subsection shall be equal to the amount of the taxes paid, except refunds granted on the tax paid on fuel used by a taxicab service shall be in an amount equal to the tax paid less $0.01 per gallon on the fuel used.

Any refunds made under this subsection shall be deducted from the urban highway funds allocated to the highway construction district, pursuant to Article 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title 33.1, in which the recipient has its principal place of business.

Except as otherwise provided in this chapter, all provisions of law applicable to the refund of fuel taxes by the Commissioner generally shall apply to the refunds authorized by this subsection. Any county having withdrawn its roads from the secondary system of state highways under provisions of § 11 Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is now provided by law with respect to other fuel tax receipts.

D. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

E. Refunds resulting from any fuel shipments diverted from Virginia shall be based on the amount of tax paid for the fuel less discounts allowed by § 58.1-2233.

F. Any person who is required to be licensed under this chapter and is applying for a refund shall not be eligible for such refund if the applicant was not licensed at the time the refundable transaction was conducted.

§ 58.1-2261. Refund procedure; investigations.

A. Any person entitled to a refund pursuant to § 58.1-2259 shall file with the Commissioner an application on a form prepared and furnished by the Commissioner. Such application shall contain the information and certifications required by the Commissioner. The applicant shall set forth the basis for the claimed refund, the total amount of such fuel purchased and used by such applicant, and how such fuel was used. The applicant shall retain the paid ticket, invoice, or other document from the seller documenting the purchase of the fuel on which a refund is claimed for a period of time to be determined by the Commissioner. The Commissioner, upon the presentation of such application shall refund to the claimant the proper amount of the tax paid as provided in this chapter, subject to the provisions of subsection D. A ticket issued to the holder of a credit card as evidence of the delivery to such holder of tax-paid fuel shall, for the purpose of this section, be a paid ticket or invoice. Tickets or invoices marked "duplicate" shall not be acceptable.

B. The application for a refund shall be filed within one year from the date of the sale as shown on the paid ticket or invoice. For those that pay the motor fuels tax in accordance with § 58.1-2200, if the refund amount certified by the Commissioner is different from the amount requested by the applicant, the Commissioner shall provide an explanation to the applicant of why the refund amount differs from the amount requested.

C. In the event an assessment is rendered for failure to report and pay the tax imposed as provided in § 58.1-2217 ~~or § 58.1-2249~~ and such fuel is subject to refund under the provisions of § 58.1-2259, the application for a refund shall be filed with the Commissioner by the person entitled to such refund within one year from the date such assessment is paid and shall be accompanied by invoices covering the sale of the fuel and billing of tax to such person.

D. The Department may make any investigation it considers necessary before refunding the fuels tax to a person, and may investigate a refund after the refund has been issued and within the time frame for adjusting tax under this chapter. As a part of such investigation, the Department may require that the person provide the paid ticket, invoice, or other document from the seller documenting the purchase of the fuel on which a refund is claimed. Failure to provide a ticket, invoice, or other document evidencing the purchase of such fuel on which a refund is requested or was previously granted will result in the denial or reversal of that refund.

E. In accordance with § 58.1-609.1, any person who is refunded tax pursuant to § 58.1-2259 shall be subject to the taxes imposed by Chapter 6 (§ 58.1-600 et seq.) of this title, unless such transaction is specifically exempted pursuant to § 58.1-609.1.

§ 58.1-2263. Shipping documents; transportation of motor fuel loaded at a terminal rack or bulk plant rack; civil penalty.

A. A person shall not transport motor fuel loaded at a terminal rack or bulk plant rack unless the person has a shipping document for its transportation that complies with this section. A terminal operator or operator of a bulk plant shall give a shipping document to the person who operates the means of conveyance into which motor fuel is loaded at the terminal rack or bulk plant rack.

B. The shipping document issued by the terminal operator shall be machine-printed and that issued by the operator of a bulk plant shall be on a printed form and both shall contain the following information and any other information required by the Commissioner:

1. Identification, including address, of the terminal or bulk plant from which the motor fuel was received;

2. Date the motor fuel was loaded;

3. Gross gallons loaded;

4. Destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent;

~~5. In the case of aviation jet fuel sold to an aviation consumer, the shipping document shall be marked with the phrase "Aviation Jet Fuel, Not for On-road Use" or a similar phrase;~~ and

~~6~~ *5.* If the document is issued by a terminal operator, (i) net gallons loaded and (ii) tax responsibility statement indicating the name of the supplier who is responsible for the tax due on the motor fuel.

C. A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser shall be liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

D. A person to whom a shipping document was issued shall:

1. Carry the shipping document in the means of conveyance for which it was issued when transporting the motor fuel described;

2. Show the shipping document to a law-enforcement officer upon request when transporting the motor fuel described;

3. Deliver motor fuel described in the shipping document to the destination state printed on it unless the person:

a. Notifies the Commissioner before transporting the motor fuel into a state other than the printed destination state that the person has received instructions after the shipping document was issued to deliver the motor fuel to a different destination state;

b. Receives from the Commissioner a confirmation number authorizing the diversion; and

c. Writes on the shipping document the change in destination state and the confirmation number for the diversion; and

4. Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

E. The person to whom motor fuel is delivered shall not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than Virginia. To determine if the shipping document shows Virginia as the destination state, the person to whom the fuel is delivered shall examine the shipping document and keep a copy of the shipping document (i) at the

place of business where the motor fuel was delivered for 90 days following the date of delivery and (ii) at such place or another place for at least three years following the date of delivery. The person who accepts delivery of motor fuel in violation of this subsection and any person liable for the tax on the motor fuel pursuant to Article 3 (§ 58.1-2217 et seq.) shall be jointly and severally liable for any tax due on the fuel.

F. Any person who (i) transports motor fuel loaded at a terminal rack or bulk plant rack without a shipping document or with a false or an incomplete shipping document or (ii) delivers motor fuel to a destination state other than that shown on the shipping document, shall be subject to a civil penalty. If the fuel is transported in a railroad tank car, the civil penalty imposed under this subsection shall be payable by the person responsible for the movement of the motor fuel in the railroad tank car. If the fuel is transported by any other means of conveyance, the civil penalty imposed under this subsection shall be payable by the person in whose name the means of conveyance is registered. The amount of the civil penalty assessed against a person for his first violation shall be $5,000. The amount of the civil penalty assessed against a person for his second or subsequent violation shall be $10,000.

§ 58.1-2272. Prohibited acts; criminal penalties.

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

1. Failing to obtain a license required by this chapter;

2. Failing to file a return required by this chapter;

3. Failing to pay a tax when due under this chapter;

4. Failing to pay a tax collected on behalf of a destination state to that state when it is due;

5. Making a false statement in an application, return, ticket, invoice, statement, or any other document required under this chapter;

6. Making a false statement in an application for a refund;

7. Failing to keep records as required under this chapter;

8. Refusing to allow the Commissioner or a representative of the Commissioner to examine the person's books and records concerning fuel;

9. Failing to make a required disclosure of the correct amount of fuel sold or used in the Commonwealth;

10. Failing to file a replacement or additional bond or certificate of deposit as required under this chapter;

11. Failing to show or give a shipping document as required under this chapter;

12. Refusing to allow a licensed distributor, licensed exporter, or licensed importer to defer payment of tax to the supplier, as required by § 58.1-2231;

~~13. Refusing to allow a bulk user of alternative fuel or a retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246 to defer payment of tax to the provider of alternative fuel, as required by § 58.1-2252;~~

~~14~~ *13*. Refusing to allow a licensed distributor or a licensed importer to take a deduction or discount allowed by § 58.1-2233 when remitting the tax to the supplier~~, or to allow a licensed retailer of alternative fuel to take a deduction or discount allowed by § 58.1-2254 when remitting the tax to the provider of alternative fuel~~;

~~15. Using, delivering, or selling any aviation fuel for use or intended for use in highway vehicles or watercraft;~~

~~16~~ *14*. Violating the provisions of § 58.1-2278;

~~17~~ *15*. Interfering with or refusing to permit seizures authorized under § 58.1-2274; or

~~18~~ *16*. Delivering fuel from a transport truck or tank wagon to the fuel tank of a highway vehicle, except in an emergency.

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

1. Dispenses any fuel on which tax levied pursuant to this chapter has not been paid into the supply tank of a highway vehicle, watercraft, or aircraft; or

2. Allows any fuel on which tax levied pursuant to this chapter has not been paid to be dispensed into the supply tank of a highway vehicle, watercraft, or aircraft.

§ 58.1-2275. Record-keeping requirements.

Each (i) person required or electing to be licensed under Article 2 (§ 58.1-2204 et seq.) ~~of this chapter,~~ *and* (ii) distributor, retailer, and bulk user not licensed under this chapter~~, and (iii) person required to be licensed under § 58.1-2244,~~ shall keep and maintain all records pertaining to fuel received, produced, manufactured, refined, compounded, used, sold or delivered, together with delivery tickets, invoices, bills of lading, and such other pertinent records and papers as may be required by the Commissioner for the reasonable administration of this chapter. Such records shall be kept and maintained for a period to include the Department's current fiscal year and the previous three fiscal years.

§ 58.1-2289. (Contingent expiration 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. Except as provided in subsection F, 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~~ *B.* One-half cent of the tax collected on each gallon of fuel on which a refund has been paid for ~~gasoline, gasohol,~~ diesel fuel~~,~~ *or* 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~~ *C.* 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~~.

F. The additional revenues, less any additional refunds authorized, generated by increases in the rates

of taxes under this chapter pursuant to enactments of the 2007 Session of the General Assembly shall be collected pursuant to Article 4 ~~of this chapter~~ and deposited into the Highway Maintenance and Operating Fund.

§ 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~~ *B.* 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 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~~ *C.* 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~~ *D.* 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~~.

§ 58.1-2290. Floorstocks tax.

A. There is hereby levied a floorstocks tax on taxable motor fuel ~~and alternative fuel~~ held in storage as of the close of the business day preceding January 1, 2001. For the purposes of this section, "close of the business day" means the time at which the last transaction has occurred for that day. The floorstocks tax shall be payable by the person in possession of the fuel on January 1, 2001. The amount of the floorstocks tax on motor fuel shall be equal to the sum of (i) the tax rate specified by § 58.1-2217 for the type of fuel and (ii) the storage tank fee rate specified under § 62.1-44.34:13, multiplied by the gallons in storage as of the close of the business day preceding January 1, 2001. ~~The amount of the floorstocks tax on alternative fuel shall be equal to the tax rate specified by subsection A of § 58.1-2249, multiplied by the gallons in storage as of the close of the business day preceding January 1, 2001.~~

B. Persons in possession of taxable fuel in storage as of the close of the business day preceding January 1, 2001, shall:

1. Take an inventory at the close of the business day preceding January 1, 2001, to determine the gallons in storage for purposes of determining the floorstocks tax;

2. Report the gallons listed in subsection A, on forms provided by the Commissioner, not later than February 1, 2001; and

3. Remit the tax levied under this section no later than July 1, 2001.

In the event the tax due is paid to the Department on or before February 1, 2001, the person remitting the tax may deduct from their submission ten percent of the tax liability due.

C. In determining the amount of floorstocks tax due under this section, the person may exclude the amount of taxable motor fuel in dead storage. "Dead storage" means the amount of taxable motor fuel that will not be pumped out of a storage tank because the fuel is below the mouth of the draw pipe. Such person may assume that the amount of motor fuel in dead storage is 200 gallons for a tank with a capacity of less than 10,000 gallons and 400 gallons for a tank with a capacity of 10,000 gallons or more. Alternatively, the amount of motor fuel in dead storage in a tank may be computed by using the manufacturer's conversion table for the tank and number of inches between the bottom of the tank and the mouth of the draw pipe. If the conversion table method is used to compute the amount of motor fuel in dead storage, the distance between the bottom of the tank and the mouth of the draw pipe will be assumed to be six inches, unless otherwise established.

§ 58.1-3700.1. Definitions.

For the purposes of this chapter and any local ordinances adopted pursuant to this chapter, unless otherwise required by the context:

"Affiliated group" means:

1. One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation which is a corporation subject to inclusion if:

a. Stock possessing at least ~~eighty~~ *80* percent of the voting power of all classes of stock and at least ~~eighty~~ *80* percent of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and

b. The common parent corporation directly owns stock possessing at least ~~eighty~~ *80* percent of the voting power of all classes of stock and at least ~~eighty~~ *80* percent of each class of the nonvoting stock of at least one of the other subject to inclusion corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends; the phrase "corporation subject to inclusion" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

2. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:

a. At least ~~eighty~~ *80* percent of the total combined voting power of all classes of stock entitled to vote or at least ~~eighty~~ *80* percent of the total value of shares of all classes of the stock of each corporation; and

b. More than ~~fifty~~ *50* percent of the total combined voting power of all classes of stock entitled to vote or more than ~~fifty~~ *50* percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one or more of the corporations subject to inclusion, including the common parent corporation, is a nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

3. Two or more entities if such entities satisfy the requirements in subdivision 1 or 2 of this

definition as if they were corporations and the ownership interests therein were stock.

"Alternative fuel" means a combustible gas, liquid, or other energy source that can be used to generate power to operate a highway vehicle and that is neither a motor fuel nor electricity used to recharge an electric motor vehicle.

"Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

"Base year" means the calendar year preceding the license year, except for contractors subject to the provisions of § 58.1-3715 or unless the local ordinance provides for a different period for measuring the gross receipts of a business, such as for beginning businesses or to allow an option to use the same fiscal year as for federal income tax purposes.

"Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

"Business" means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

"Definite place of business" means an office or a location at which occurs a regular and continuous course of dealing for ~~thirty~~ *30* consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not subject to licensure as a peddler or itinerant merchant.

"Diesel fuel" means any liquid that is suitable for use as a fuel in a diesel-powered highway vehicle or watercraft. "Diesel fuel" includes undyed #1 fuel oil and undyed #2 fuel oil, but does not include gasoline or aviation jet fuel.

"Entity" means a business organization, other than a sole proprietorship, that is a corporation, limited liability company, limited partnership, or limited liability partnership duly organized under the laws of the Commonwealth or another state.

"Gasohol" means a blended fuel composed of gasoline and fuel grade ethanol.

"Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method; (ii) a petroleum product component of gasoline, such as naphtha, reformate, or toluene; (iii) gasohol; and (iv) fuel grade ethanol. "Gasoline" does not include aviation gasoline sold for use in an aircraft engine.

"Financial services" means the buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities, or other investments.

"Fuel sale" or "fuel sales" shall mean retail sales of alternative fuel, blended fuel, diesel fuel, gasohol, or gasoline~~, as such terms are defined in § 58.1-2201~~.

"Gas retailer" means a person or entity engaged in business as a retailer offering to sell at retail on a daily basis alternative fuel, blended fuel, diesel fuel, gasohol, or gasoline~~, as such terms are defined in § 58.1-2201~~.

"Gross receipts" means the whole, entire, total receipts, without deduction.

"Independent registered representative" means an independent contractor registered with the United States Securities and Exchange Commission.

"License year" means the calendar year for which a license is issued for the privilege of engaging in business.

"Professional services" means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing

arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others, as the Department of Taxation may list in the BPOL guidelines promulgated pursuant to § 58.1-3701. The Department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used in its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

"Purchases" means all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of manufacture.

"Real estate services" means providing a service with respect to the purchase, sale, lease, rental, or appraisal of real property.

"Security broker" means a "broker" as such term is defined under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), or any successor law to the Securities Exchange Act of 1934, who is registered with the United States Securities and Exchange Commission.

"Security dealer" means a "dealer" as such term is defined under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), or any successor law to the Securities Exchange Act of 1934, who is registered with the United States Securities and Exchange Commission.

§ 62.1-44.34:13. Levy of fee for Fund maintenance.

A. *As used in this section, unless the context requires a different meaning:*

"Alternative fuel" means a combustible gas, liquid, or other energy source that can be used to generate power to operate a highway vehicle and that is neither a motor fuel nor electricity used to recharge an electric motor vehicle.

"Aviation jet fuel" means fuel designed for use in the operation of jet or turbo-prop aircraft and sold or used for that purpose.

"Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

"Diesel fuel" means any liquid that is suitable for use as a fuel in a diesel-powered highway vehicle or watercraft. "Diesel fuel" includes undyed #1 fuel oil and undyed #2 fuel oil, but does not include gasoline or aviation jet fuel.

"Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method; (ii) a petroleum product component of gasoline, such as naphtha, reformate, or toluene; (iii) gasohol; and (iv) fuel grade ethanol. "Gasoline" does not include aviation gasoline sold for use in an aircraft engine.

"Heating oil" means any combustible liquid, including but not limited to dyed #1 fuel oil, dyed #2 fuel oil, and kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial processing purposes.

B. In order to generate revenue for the Fund and to make the Fund available to owners and operators of underground storage tanks and to owners and operators of aboveground storage tanks, there shall be imposed a fee of one-fifth of one cent on each gallon of the following fuels sold and delivered or used in the Commonwealth: gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil~~, as such terms are defined in § 58.1-2201~~; however, such fee shall not be imposed on (i) gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered to the United States or its departments, agencies, and instrumentalities for the exclusive use by the United States or its departments, agencies, and instrumentalities, (ii) alternative fuel ~~as defined in § 58.1-2201~~, or (iii) aviation jet fuel ~~as defined in § 58.1-2201~~.

~~B.~~ *C.* The fee shall be remitted to the Department of Motor Vehicles in the same manner and subject to the same provisions specified in Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1, except § 58.1-2236 shall not apply.

~~C.~~ *D.* Any person who purchases gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, or heating oil upon which the fee imposed by this article has been paid shall be entitled to a refund for the amount of the fee paid if such person subsequently transports and delivers such fuel to another state, district or country for sale or use outside the Commonwealth. The application for refund shall be accompanied by a paid ticket or invoice covering the sales of such fuel and shall be filed with

the Commissioner of the Department of Motor Vehicles within one year of the date of payment of the fee for which the refund is claimed. A refund shall not be granted pursuant to this article on any fuel which is transported and delivered outside the Commonwealth in the fuel supply tank of a highway vehicle or aircraft.

~~D.~~ *E.* To maintain the Fund at an appropriate operating level, the Commissioner of the Department of Motor Vehicles shall increase the fee to three-fifths of one cent when notified by the Comptroller that the Fund has been or is likely in the near future to be reduced below three million dollars, exclusive of fees collected pursuant to § 62.1-44.34:21, and he shall reinstitute the one-fifth of one cent fee when the Comptroller notifies him that the Fund has been restored to ~~twelve~~ *$12* million ~~dollars~~ exclusive of fees collected pursuant to § 62.1-44.34:21.

~~E.~~ *F.* The Comptroller shall report to the Commissioner quarterly regarding the Fund expenditures and Fund total for the preceding quarter.

~~F.~~ *G.* Revenues from such fees, less refunds and administrative expenses, shall be deposited in the Fund and used for the purposes set forth in this article.

2. That §§ 58.1-2227 and 58.1-2239 and Article 5 (§§ 58.1-2244 through 58.1-2258) of Chapter 22 of Title 58.1 of the Code of Virginia are repealed.

3. That in computing the additional sales and use tax revenue paid under subsection A of § 58.1-638 of the Code of Virginia as a result of this act, the amount of such revenue attributable to sales and use tax on food for human consumption, as defined in § 58.1-611.1 of the Code of Virginia, shall be excluded.

4. That the additional revenue attributable to the increase in the sales and use tax rate pursuant to this act shall be distributed in the same manner as the motor fuels tax revenue was distributed pursuant to § 58.1-2289 of the Code of Virginia as such section was in effect on June 30, 2013, as follows: The Tax Commissioner and the Commissioner of the Department of Motor Vehicles, using the average of the most recent five fiscal years, shall calculate the percentages of motor fuels tax revenue attributable to each allocation of such revenue pursuant to former § 58.1-2289 of the Code of Virginia. Each fiscal year, those percentages shall be applied to the increase in revenue attributable to the increase in the sales and use tax rate to determine the amount of each allocation.