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HOUSE BILL NO. 2285

Offered January 16, 2013

A BILL to amend and reenact §§ 58.1-2201, 58.1-2249, 58.1-2701, as it is currently effective and as it may become effective, and 58.1-2706 of the Code of Virginia, relating to taxes on alternative fuels.

Patron—May

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2201, 58.1-2249, 58.1-2701, as it is currently effective and as it may become effective, and 58.1-2706 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2201. 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.

"Biodiesel fuel" has the same meaning ascribed to the term under § 67-500.

"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

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59 officers and agents.

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

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

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

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

72 "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C.
73 § 4082.

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

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

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

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

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

85 "Fuel" includes motor fuel and alternative fuel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

121 "Motor fuel" means gasoline, diesel fuel, blended fuel, and aviation fuel.
 122 "Motor fuel transporter" means a person who transports motor fuel for hire by means of a pipeline, a
 123 tank wagon, a transport truck, a railroad tank car, or a marine vessel.
 124 "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of
 125 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch.
 126 "Occasional importer" means any person who (i) imports motor fuel by any means outside the
 127 terminal transfer system and (ii) is not required to be licensed as a bonded importer.
 128 "Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a
 129 supplier's license under this chapter.
 130 "Person" means any individual; firm; cooperative; association; corporation; limited liability company;
 131 trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in
 132 bankruptcy; club, society or other group or combination acting as a unit; or public body, including but
 133 not limited to the Commonwealth, any other state, and any agency, department, institution, political
 134 subdivision or instrumentality of the Commonwealth or any other state.
 135 "Position holder" means a person who holds an inventory position of motor fuel in a terminal, as
 136 reflected on the records of the terminal operator. A person holds an "inventory position of motor fuel"
 137 when he has a contract with the terminal operator for the use of storage facilities and terminaling
 138 services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.
 139 "Principal" means (i) if a partnership, all its partners; (ii) if a corporation, all its officers, directors,
 140 and controlling direct or indirect owners; (iii) if a limited liability company, all its members; and (iv) or
 141 an individual.
 142 "Provider of alternative fuel" means a person who (i) acquires alternative fuel for sale or delivery to
 143 a bulk user or a retailer; (ii) maintains storage facilities for alternative fuel, part or all of which the
 144 person sells to someone other than a bulk user or a retailer to operate a highway vehicle; (iii) sells
 145 alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a
 146 fuel supply line from the cargo tank of the vehicle to the engine of the vehicle; or (iv) imports
 147 alternative fuel into Virginia, by a means other than the usual tank or receptacle connected with the
 148 engine of a highway vehicle, for sale or use by that person to operate a highway vehicle.
 149 "Rack" means a facility that contains a mechanism for delivering motor fuel from a refinery,
 150 terminal, or bulk plant into a transport truck, railroad tank car, or other means of transfer that is outside
 151 the terminal transfer system.
 152 "Refiner" means any person who owns, operates, or otherwise controls a refinery.
 153 "Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum
 154 products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel
 155 or at a rack.
 156 "Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical
 157 transfer to a transport truck or other means of conveyance outside the terminal transfer system is
 158 complete upon delivery into the means of conveyance.
 159 "Retailer" means a person who (i) maintains storage facilities for motor fuel and (ii) sells the fuel at
 160 retail or dispenses the fuel at a retail location.
 161 "Retailer of alternative fuel" means a person who (i) maintains storage facilities for alternative fuel
 162 and (ii) sells or dispenses the fuel at retail, to be used to generate power to operate a highway vehicle.
 163 "Supplier" means (i) a position holder, or (ii) a person who receives motor fuel pursuant to a
 164 two-party exchange. A licensed supplier includes a licensed elective supplier and licensed permissive
 165 supplier.
 166 "System transfer" means a transfer (i) of motor fuel within the terminal transfer system or (ii) of fuel
 167 grade ethanol by transport truck or railroad tank car.
 168 "Tank wagon" means a straight truck or straight truck/trailer combination designed or used to carry
 169 fuel and having a capacity of less than 6,000 gallons.
 170 "Terminal" means a motor fuel storage and distribution facility (i) to which a terminal control
 171 number has been assigned by the Internal Revenue Service, (ii) to which motor fuel is supplied by
 172 pipeline or marine vessel, and (iii) from which motor fuel may be removed at a rack.
 173 "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.
 174 "Terminal transfer system" means a motor fuel distribution system consisting of refineries, pipelines,
 175 marine vessels, and terminals, and which is a "bulk transfer/terminal system" under 26 C.F.R. Part
 176 48.4081-1.
 177 "Transmix" means (i) the buffer or interface between two different products in a pipeline shipment or
 178 (ii) a mix of two different products within a refinery or terminal that results in an off-grade mixture.
 179 "Transport truck" means a tractor truck/semitrailer combination designed or used to transport cargoes
 180 of motor fuel over a highway.
 181 "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.

§ 58.1-2249. Tax on alternative fuel.

A. (Contingent expiration date) 1. There is hereby levied a tax at the rate of ~~seventeen and one-half cents~~ following rates per gallon on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle:

- a. For biodiesel fuel, 1.04 multiplied by the rate under subsection A of § 58.1-2217;
- b. For liquefied natural gas, 0.65 multiplied by the rate under subsection A of § 58.1-2217;
- c. For liquefied petroleum gas, 1.35 multiplied by the rate under subsection A of § 58.1-2217; and
- d. For methanol, 0.48 multiplied by the rate under subsection A of § 58.1-2217.

2. There is hereby levied a tax at a rate equivalent to ~~seventeen and one-half cents per gallon on all the following rates~~ on other alternative fuel fuels used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels:

- a. For each 127 cubic feet of compressed natural gas, the number of cents under subsection A of § 58.1-2217;
- b. For each 357 cubic feet of hydrogen, the number of cents under subsection A of § 58.1-2217; and
- c. For each 33.4 kilowatt hours of electricity provided by an electric vehicle charging service, the number of cents under subsection A of § 58.1-2217.

A. (Contingent effective date) 1. There is hereby levied a tax at the rate of ~~sixteen cents~~ following rates per gallon on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle:

- a. For biodiesel fuel, 1.04 multiplied by the rate under subsection B of § 58.1-2217;
- b. For liquefied natural gas, 0.65 multiplied by the rate under subsection B of § 58.1-2217;
- c. For liquefied petroleum gas, 1.35 multiplied by the rate under subsection B of § 58.1-2217; and
- d. For methanol, 0.48 multiplied by the rate under subsection B of § 58.1-2217.

2. There is hereby levied a tax at a rate equivalent to ~~sixteen cents per gallon on all the following rates~~ on other alternative fuel fuels used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels:

- a. For each 127 cubic feet of compressed natural gas, the number of cents under subsection B of § 58.1-2217;
- b. For each 357 cubic feet of hydrogen, the number of cents under subsection B of § 58.1-2217; and
- c. For each 33.4 kilowatt hours of electricity provided by an electric vehicle charging service, the number of cents under subsection B of § 58.1-2217.

B. The taxes under this section shall be imposed on each whole gallon, cubic foot, or kilowatt hour, or portion of the same.

C. In addition to any tax imposed by this article, there is hereby levied an annual license tax of \$50 per vehicle on each highway vehicle registered in Virginia that is an electric motor vehicle. If such a highway vehicle is registered for a period other than one year as provided under § 46.2-646, the license tax shall be multiplied by the number of years or fraction thereof that the vehicle will be registered.

D. The Commissioner shall implement procedures for the efficient collection of the taxes imposed under this section.

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

A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to ~~\$0.24 three and one-half cents (\$0.035) more~~ per gallon than the corresponding tax imposed under Chapter 22 (§ 58.1-2200 et. seq.) calculated on the amount of motor fuel, diesel fuel, or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~ 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within the Commonwealth.

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

B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles

that are not registered under the International Registration Plan shall pay a fee of \$150 per year for each qualified highway vehicle regardless of whether such vehicle will be included on the motor carrier's IFTA return. The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

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

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

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

A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to ~~nineteen~~ *three and one-half cents (\$0.035) more per gallon than the corresponding tax imposed under Chapter 22 (§ 58.1-2200 et seq.)* calculated on the amount of motor fuel, diesel fuel, or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~ *60* degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within the Commonwealth.

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

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

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

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

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

A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax equivalent to ~~seventeen and one-half cents per gallon~~ *the tax imposed under Chapter 22 (§ 58.1-2200 et seq.)* on all motor fuel, diesel fuel, and liquefied gases purchased by such carrier within the Commonwealth for use in its operations either within or without the Commonwealth and upon which ~~the~~ *such* motor fuel, diesel fuel, or liquefied gases tax imposed by the laws of the Commonwealth has been paid by such carrier. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the Department shall be furnished by each carrier claiming the credit herein allowed.

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

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

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

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

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

2. That the provisions of this act shall become effective on January 1, 2014.