

13100750D

**SENATE BILL NO. 717**

Offered January 9, 2013

Prefiled November 30, 2012

A *BILL to amend and reenact §§ 33.1-23.03:1, 33.1-23.03:10, 33.1-221.1:1.3, 58.1-320, 58.1-602, 58.1-603, 58.1-2201, 58.1-2249, 58.1-2261, and 58.1-2289, as it is currently effective and as it may become effective, of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 58.1-2259.1 and by adding in Chapter 22 of Title 58.1 an article numbered 8.1, consisting of a section numbered 58.1-2288.1; and to repeal §§ 58.1-438.1, 58.1-439.1, and 58.1-439.12:02 of the Code of Virginia, relating to establishing and adjusting sources of revenue for appropriations of the Commonwealth and its localities.*

Patrons—Watkins and Puller

Referred to Committee on Finance

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

1. That §§ 33.1-23.03:1, 33.1-23.03:10, 33.1-221.1:1.3, 58.1-320, 58.1-602, 58.1-603, 58.1-2201, 58.1-2249, 58.1-2261, and 58.1-2289, as it is currently effective and as it may become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-2259.1 and by adding in Chapter 22 of Title 58.1 an article numbered 8.1, consisting of a section numbered 58.1-2288.1, 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 [Repealed.]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 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.).

10. *Revenues generated by § 58.1-2288.1 and designated for this fund pursuant to § 58.1-2289.*

**§ 33.1-23.03:10. Tolls for use of Interstate Highway System components.**

A. Notwithstanding any contrary provision of this title and in accordance with all applicable federal and state statutes and requirements, the Commonwealth Transportation Board may impose and collect tolls from all classes of vehicles in amounts established by the Board for the use of any component of the Interstate Highway System within the Commonwealth. However, prior approval of the General Assembly shall be required prior to the imposition and collection of any toll for use of ~~all or any portion of Interstate Route 81~~ existing component of the Interstate Highway System within the Commonwealth. Such funds so collected shall be deposited into the Transportation Trust Fund

INTRODUCED

SB717

59 established pursuant to § 33.1-23.03:1, subject to allocation by the Board as provided in this section.

60 B. The toll facilities authorized by this section shall be subject to the provisions of federal law for  
61 the purpose of tolling motor vehicles to finance interstate construction and reconstruction, promote  
62 efficiency in the use of highways, reduce traffic congestion, improve air quality and for such other  
63 purposes as may be permitted by federal law.

64 C. In order to mitigate traffic congestion in the vicinity of the toll facilities, no toll facility shall be  
65 operated without high-speed automated toll collection technology designed to allow motorists to travel  
66 through the toll facilities without stopping to make payments. Nothing in this subsection shall be  
67 construed to prohibit a toll facility from retaining means of non-automated toll collection in some lanes  
68 of the facility. The Board shall also consider traffic congestion and mitigation thereof and the impact on  
69 local traffic movement as factors in determining the location of the toll facilities authorized pursuant to  
70 this section.

71 D. The revenues collected from each toll facility established pursuant to this section shall be  
72 deposited into segregated subaccounts in the Transportation Trust Fund and may be allocated by the  
73 Commonwealth Transportation Board as the Board deems appropriate to:

74 1. Pay or finance all or part of the costs of programs or projects, including without limitation the  
75 costs of planning, operation, maintenance and improvements incurred in connection with the toll facility  
76 provided that such allocations shall be limited to programs and projects that are reasonably related to or  
77 benefit the users of the toll facility. The priorities of metropolitan planning organizations, planning  
78 district commissions, local governments, and transportation corridors shall be considered by the Board in  
79 making project allocations from such revenues deposited into the Transportation Trust Fund.

80 2. Repay funds from the Toll Facilities Revolving Account or the Transportation Partnership  
81 Opportunity Fund.

82 3. Pay the Board's reasonable costs and expenses incurred in the administration and management of  
83 the Toll Facility.

84 **§ 33.1-221.1:1.3. Intercity Passenger Rail Operating and Capital Fund.**

85 A. The General Assembly declares it to be in the public interest that developing and continuing  
86 intercity passenger rail operations and the development of rail infrastructure, rolling stock, and support  
87 facilities to support intercity passenger rail service are important elements of a balanced transportation  
88 system in the Commonwealth and further declares it to be in the public interest that the retention,  
89 maintenance, improvement, and development of intercity passenger rail-related infrastructure  
90 improvements and operations are essential to the Commonwealth's continued economic growth, vitality,  
91 and competitiveness in national and world markets.

92 B. There is hereby created in the state treasury a special nonreverting fund to be known as the  
93 Intercity Passenger Rail Operating and Capital Fund, which shall be considered a special fund within the  
94 Transportation Trust Fund. The Intercity Passenger Rail Operating and Capital Fund shall be established  
95 on the books of the Comptroller and shall consist of funds as may be set forth in the appropriation act,  
96 *revenues generated by § 58.1-2288.1 and designated for the Fund pursuant to § 58.1-2289, and by*  
97 *allocation of funds allocated for operations and projects pursuant to this section by the Commonwealth*  
98 *Transportation Board in accordance with § 33.1-23.1. Interest earned on moneys in the Intercity*  
99 *Passenger Rail Operating and Capital Fund shall remain in the Intercity Passenger Rail Operating and*  
100 *Capital Fund and be credited to it. Any moneys remaining in the Intercity Passenger Rail Operating and*  
101 *Capital Fund, including interest thereon, at the end of each fiscal year shall not revert to the general*  
102 *fund but shall remain in the Intercity Passenger Rail Operating and Capital Fund. Moneys in the*  
103 *Intercity Passenger Rail Operating and Capital Fund shall be used solely as provided in this section.*  
104 *Expenditures and disbursements from the Intercity Passenger Rail Operating and Capital Fund shall be*  
105 *made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the*  
106 *Director of the Virginia Department of Rail and Public Transportation or his designee.*

107 C. The Director of the Virginia Department of Rail and Public Transportation or his designee shall  
108 administer and expend or commit, subject to the approval of the Commonwealth Transportation Board,  
109 the Intercity Passenger Rail Operating and Capital Fund to support the cost of operating intercity  
110 passenger rail service; acquiring, leasing, and/or improving railways or railroad equipment, rolling stock,  
111 rights-of-way, or facilities; or assisting other appropriate entities to acquire, lease, or improve railways or  
112 railroad equipment, rolling stock, rights-of-way, or facilities for intercity passenger rail transportation  
113 purposes whenever the Board shall have determined that such acquisition, lease, and/or improvement is  
114 for the common good of a region of the Commonwealth or the Commonwealth as a whole. Funds  
115 provided in this section may also be used as matching funds for federal grants to support intercity  
116 passenger rail projects.

117 D. Capital projects including tracks and facilities constructed and property, equipment, and rolling  
118 stock purchased with funds under this section shall be the property of the Commonwealth for the useful  
119 life of the project, as determined by the Director of the Department of Rail and Public Transportation,  
120 and shall be made available for use by all intercity passenger rail operations and common carriers using

the railway system to which they connect under the trackage rights or operating agreements between the parties. Projects undertaken pursuant to this section shall be limited to those of a region of the Commonwealth or the Commonwealth as a whole. Such projects undertaken pursuant to this section shall not require a matching contribution; however, projects proposed with matching funds may receive more favorable consideration. Matching funds may be provided from any source except Commonwealth Transportation Fund revenues.

**§ 58.1-320. Imposition of tax.**

A tax is hereby annually imposed on the Virginia taxable income for each taxable year of every individual as follows:

Two percent on income not exceeding \$3,000 *for taxable years beginning before January 1, 2014;*

Three percent on income in excess of \$3,000, but not in excess of \$5,000 *for taxable years beginning before January 1, 2014;*

*Three-quarters of one percent on income not exceeding \$5,000 for taxable years beginning on and after January 1, 2014;*

Five percent on income in excess of \$5,000, but not in excess of \$12,000 for taxable years beginning before January 1, 1987;

Five percent on income in excess of \$5,000 but not in excess of \$14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five percent on income in excess of \$5,000 but not in excess of \$15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five percent on income in excess of \$5,000 but not in excess of \$16,000 for taxable years beginning January 1, 1989, through December 31, 1989;

Five percent on income in excess of \$5,000 but not in excess of \$17,000 for taxable years beginning January 1, 1990 *through December 31, 2013;*

*Four and one-half percent on income in excess of \$5,000 but not in excess of \$17,000 for taxable years beginning on and after January 1, 2014;*

Five and three-quarters percent on income in excess of \$12,000 for taxable years beginning before January 1, 1987;

Five and three-quarters percent on income in excess of \$14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five and three-quarters percent on income in excess of \$15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five and three-quarters percent on income in excess of \$16,000 for taxable years beginning January 1, 1989, through December 31, 1989; and

Five and three-quarters percent on income in excess of \$17,000 for taxable years beginning on and after January 1, 1990.

**§ 58.1-602. Definitions.**

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined herein shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Armored car services" means the service of picking up and delivering money, receipts, or other valuable items while using personnel and equipment to protect such properties while in transit.

"Auto repairs" means repair and maintenance services for motor vehicles, including diagnosis and repair of mechanical and electrical systems for motor vehicles, repair to motor vehicle interiors, and paint or repair of motor vehicle exteriors.

"Auto washing" means the service of cleaning, washing, or waxing motor vehicles.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Courier services" means local delivery of parcels and documents, whether delivered by foot, bicycle, automobile, small truck, or van.

"Custom program" means a computer program which is specifically designed and developed only for

182 one customer. The combining of two or more prewritten programs does not constitute a custom  
183 computer program. A prewritten program that is modified to any degree remains a prewritten program  
184 and does not become custom.

185 "Distribution" means the transfer or delivery of tangible personal property for use, consumption, or  
186 storage by the distributee, and the use, consumption, or storage of tangible personal property by a  
187 person who has processed, manufactured, refined, or converted such property, but does not include the  
188 transfer or delivery of tangible personal property for resale or any use, consumption, or storage  
189 otherwise exempt under this chapter.

190 *"Employment services" means services related to listing employment vacancies and referring or*  
191 *placing applicants for employment; providing executive search, recruitment, and placement services; or*  
192 *supplying workers to clients' businesses for limited periods of time to supplement the clients' workforce.*

193 "Gross proceeds" means the charges made or voluntary contributions received for the lease or rental  
194 of tangible personal property or for furnishing services, computed with the same deductions, where  
195 applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use,  
196 but not less frequently than monthly.

197 "Gross sales" means the sum total of all retail sales of tangible personal property or services as  
198 defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not  
199 include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the  
200 Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the  
201 article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city  
202 under § 58.1-605 or 58.1-606.

203 "Import" and "imported" are words applicable to tangible personal property imported into the  
204 Commonwealth from other states as well as from foreign countries, and "export" and "exported" are  
205 words applicable to tangible personal property exported from the Commonwealth to other states as well  
206 as to foreign countries.

207 "In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth  
208 of Virginia and includes all territory within these limits owned by or ceded to the United States of  
209 America.

210 "Integrated process," when used in relation to semiconductor manufacturing, means a process that  
211 begins with the research or development of semiconductor products, equipment, or processes, includes  
212 the handling and storage of raw materials at a plant site, and continues to the point that the product is  
213 packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing,  
214 any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be  
215 deemed used as part of the integrated process if its use contributes, before, during, or after production,  
216 to higher product quality, production yields, or process efficiencies. Except as otherwise provided by  
217 law, such term shall not mean general maintenance or administration.

218 "Internet" means collectively, the myriad of computer and telecommunications facilities, which  
219 comprise the interconnected world-wide network of computer networks.

220 "Internet service" means a service that enables users to access proprietary and other content,  
221 information electronic mail, and the Internet as part of a package of services sold to end-user  
222 subscribers.

223 "Lease or rental" means the leasing or renting of tangible personal property and the possession or use  
224 thereof by the lessee or renter for a consideration, without transfer of the title to such property.

225 "Manufacturing, processing, refining, or conversion" includes the production line of the plant starting  
226 with the handling and storage of raw materials at the plant site and continuing through the last step of  
227 production where the product is finished or completed for sale and conveyed to a warehouse at the  
228 production site, and also includes equipment and supplies used for production line testing and quality  
229 control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and  
230 magazine printing when such activities are performed by the publisher of any newspaper or magazine  
231 for sale daily or regularly at average intervals not exceeding three months.

232 The determination whether any manufacturing, mining, processing, refining or conversion activity is  
233 industrial in nature shall be made without regard to plant size, existence or size of finished product  
234 inventory, degree of mechanization, amount of capital investment, number of employees or other factors  
235 relating principally to the size of the business. Further, "industrial in nature" shall include, but not be  
236 limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the  
237 Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

238 *"Marina services" means operating a docking or storage facility for pleasure boats.*

239 "Modular building" means, but shall not be limited to, single and multifamily houses, apartment  
240 units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are  
241 intended to become real property, primarily constructed at a location other than the permanent site, built  
242 to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the  
243 Virginia Department of Housing and Community Development, and shipped with most permanent

components in place to the site of final assembly. For purposes of this chapter, a modular building shall not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

"Modular building manufacturer" means a person or corporation who owns or operates a manufacturing facility and is engaged in the fabrication, construction and assembling of building supplies and materials into modular buildings, as defined in this section, at a location other than at the site where the modular building will be assembled on the permanent foundation and may or may not be engaged in the process of affixing the modules to the foundation at the permanent site.

"Modular building retailer" means any person who purchases or acquires a modular building from a modular building manufacturer, or from another person, for subsequent sale to a customer residing within or outside of the Commonwealth, with or without installation of the modular building to the foundation at the permanent site.

"Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid.

"Occasional sale" means a sale of tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

"Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for purposes of this chapter only, shall also include Internet service regardless of whether the provider of such service is also a telephone common carrier.

"Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of such term shall mean the same as the singular.

"Prewritten program" means a computer program that is prepared, held or existing for general or repeated sale or lease, including a computer program developed for in-house use and subsequently sold or leased to unrelated third parties.

"Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of every kind and description, and all other equipment determined by the Tax Commissioner to constitute railroad rolling stock.

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and shall include any such transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale for resale which is not in strict compliance with such regulations shall be personally liable for payment of the tax.

The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration; (ii) sales of tangible personal property to persons for resale when because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations; and (iii) the separately stated charge made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

The term "transient" shall not include a purchaser of camping memberships, time-shares, condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in, real estate, however created or sold and whether registered with the Commonwealth or not. Further, a purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a transient;

305 provided, however, that the term or time period involved is for seven years or more.

306 The terms "retail sale" and "sale at retail" shall not include a transfer of title to tangible personal  
307 property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i)  
308 at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the  
309 transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the  
310 purchaser manufactures goods.

311 "Retailer" means every person engaged in the business of making sales at retail, or for distribution,  
312 use, consumption, or storage to be used or consumed in the Commonwealth.

313 "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional  
314 or otherwise, in any manner or by any means whatsoever, of tangible personal property and any  
315 rendition of a taxable service for a consideration, and includes the fabrication of tangible personal  
316 property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and  
317 the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on  
318 the premises of the person furnishing, preparing, or serving such tangible personal property. A  
319 transaction whereby the possession of property is transferred but the seller retains title as security for the  
320 payment of the price shall be deemed a sale.

321 "Sales price" means the total amount for which tangible personal property or services are sold,  
322 including any services that are a part of the sale, valued in money, whether paid in money or otherwise,  
323 and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer,  
324 without any deduction therefrom on account of the cost of the property sold, the cost of materials used,  
325 labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any  
326 cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from  
327 credit extended on sales of tangible personal property under conditional sale contracts or other  
328 conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local  
329 property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity  
330 added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory  
331 gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such  
332 mandatory gratuity or service charge does not exceed 20% of the price of the meal. Where used articles  
333 are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used  
334 articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the  
335 new or used articles and the credit for the used articles.

336 "Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring,  
337 lighting, equipment, and all other property used to reduce contamination or to control airflow,  
338 temperature, humidity, vibration, or other environmental conditions required for the integrated process of  
339 semiconductor manufacturing.

340 "Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii)  
341 the related accessories, components, pedestals, bases, or foundations used in connection with the  
342 operation of the equipment, without regard to the proximity to the equipment, the method of attachment,  
343 or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other  
344 property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or  
345 maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control  
346 testing of product, materials, equipment, or processes; or the measurement of equipment performance or  
347 production parameters regardless of where or when the quality control, testing, or measuring activity  
348 takes place, how the activity affects the operation of equipment, or whether the equipment and supplies  
349 come into contact with the product.

350 "Storage" means any keeping or retention of tangible personal property for use, consumption or  
351 distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of  
352 business.

353 "Tangible personal property" means personal property which may be seen, weighed, measured, felt,  
354 or touched, or is in any other manner perceptible to the senses. The term "tangible personal property"  
355 shall not include stocks, bonds, notes, insurance or other obligations or securities. The term "tangible  
356 personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt  
357 from all other state and local utility taxes, and (ii) manufactured signs.

358 "*Taxi and limousine services*" means providing passenger transportation by automobile or van, not  
359 operated over regular routes or on regular schedules. "*Taxi and limousine services*" includes specialty  
360 and luxury passenger transportation services using limousine or luxury sedans, generally on a reserved  
361 basis.

362 "*Travel services*" means services related to selling travel, tour, and accommodation services to the  
363 general public or commercial clients.

364 "Use" means the exercise of any right or power over tangible personal property incident to the  
365 ownership thereof, except that it does not include the sale at retail of that property in the regular course  
366 of business. The term does not include the exercise of any right or power, including use, distribution, or

storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone. The term does not include any sale determined to be a gift transaction, subject to tax under § 58.1-604.6.

"Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein defined.

"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to those activities which are an integral part of the production of a product, including all steps of an integrated manufacturing or mining process, but not including ancillary activities such as general maintenance or administration. When used in relation to mining, it shall refer to the activities specified above, and in addition, any reclamation activity of the land previously mined by the mining company required by state or federal law.

"Video programmer" means a person or entity that provides video programming to end-user subscribers.

"Video programming" means video and/or information programming provided by or generally considered comparable to programming provided by a cable operator including, but not limited to, Internet service.

#### **§ 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:

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.

6. *Effective July 1, 2013, of the gross sales of armored car services, auto repairs, auto washing, courier services, employment services, marina services, taxi and limousine services, and travel services.*

#### **§ 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 fuel.

"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.

*"Hybrid electric motor vehicle" means a motor vehicle that uses electricity and another source of motive power.*

"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, 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.

**§ 58.1-2249. Tax on alternative fuel.**

A. (Contingent expiration date - see Editor's notes) There is hereby levied a tax at the rate of seventeen and one-half cents (\$0.175) 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. There is hereby levied a tax at a rate equivalent to seventeen and one-half cents (\$0.175) per gallon on all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

A. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of sixteen cents (\$0.16) 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. There is hereby levied a tax at a rate equivalent to sixteen cents (\$0.16) per gallon on all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of \$50 \$102 per vehicle on each highway vehicle registered in Virginia that is an electric motor vehicle or a hybrid electric motor vehicle. If such a highway vehicle is registered for a period other than one year as provided under § 46.2-646, the license tax shall be multiplied by the number of years or fraction thereof that the vehicle will be registered.

**§ 58.1-2259.1. Refund for hybrid electric motor vehicles.**

A refund of the tax paid pursuant to § 58.1-2288.1 for the purchase of fuel 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 § 58.1-2288.1 upon any fuel used to fuel a hybrid electric motor vehicle for which a current annual license tax has been paid pursuant to subsection B of § 58.1-2249.

**§ 58.1-2261. Refund procedure; investigations.**

A. Any person entitled to a refund pursuant to § 58.1-2259 or 58.1-2259.1 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. *For a refund pursuant to § 58.1-2259.1, the applicant shall also present a copy of a current Virginia vehicle registration for a hybrid electric motor vehicle for which the annual license has been paid.* 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 or 58.1-2259.1, 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 or 58.1-2259.1 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.

*Article 8.1.*

*Additional Taxes.*

**§ 58.1-2288.1. Additional taxes on fuels.**

A. Beginning July 1, 2013, and thereafter, any licensee or person required to precollect the tax imposed on fuels under § 58.1-2217 or 58.1-2249 shall also be required to precollect an additional tax, which is hereby imposed at the rate established in subsection B, on the number of gallons of gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel for which the licensee or person is precollecting the tax under such section or sections. The tax imposed under this section shall be in addition to all other taxes and fees of every kind now imposed by law.

B. The tax imposed under subsection A shall be imposed at a cents-per-gallon rate determined by the Commissioner. Such tax shall be imposed at a cents-per-gallon rate equal to five percent of the stateside average wholesale price of a gallon of self-serve unleaded regular gasoline for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner rounded up to the nearest one-tenth of one cent.

In computing the cents-per-gallon tax, the Commissioner shall use four base periods. The period from March 1 through May 31 shall be the base period for the purpose of determining the cents-per-gallon tax for the immediately following period beginning July 1 and ending September 30, inclusive. The period from June 1 through August 31 shall be the base period for determining the cents-per-gallon tax for the immediately following period beginning October 1 and ending December 31, inclusive. The period from September 1 through November 30 shall be the base period for determining the cents-per-gallon tax for the immediately following period beginning January 1 and ending March 31, inclusive. The period from December 1 through the last day of February shall be the base period for determining the cents-per-gallon tax for the immediately following period beginning April 1 and ending June 30, inclusive.

C. The tax imposed under this section on gallons of fuel for which the licensee or person is precollecting the tax under § 58.1-2217 or 58.1-2249 is imposed on the ultimate consumer but shall be precollected as prescribed herein, and the levies and assessments imposed on the licensee or person for

674 *such tax are imposed on licensee or person as agents of the Commonwealth for the precollection of the*  
675 *tax.*

676 *D. The tax imposed by subsection A shall be due and paid by such licensee or person at the same*  
677 *time that the tax under § 58.1-2217 or 58.1-2249, as applicable, is due. All provisions of this chapter,*  
678 *including return filing and reporting requirements, payment requirements and due dates for payment of*  
679 *tax, requirements to precollect tax, late payment penalties and interest, jeopardy assessments, civil*  
680 *penalties, discounts, deductions, and exemptions from tax, shall apply mutatis mutandis to the additional*  
681 *tax imposed under this section.*

682 **§ 58.1-2289. (Contingent expiration date) Disposition of tax revenue generally.**

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

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

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

702 B. Except as provided in ~~subsection~~ *subsections F and G*, the tax collected on each gallon of aviation  
703 fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of  
704 the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be  
705 disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost  
706 of the administration of the laws of this Commonwealth relating to aviation, for the construction,  
707 maintenance and improvement of airports and landing fields to which the public now has or which it is  
708 proposed shall have access, and for the promotion of aviation in the interest of operators and the public  
709 generally.

710 C. One-half cent (*\$0.005*) of the tax collected on each gallon of fuel on which a refund has been  
711 paid for gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, for fuel consumed in tractors and  
712 unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state  
713 treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds  
714 and defray the costs of the research and educational phases of the agricultural program, including  
715 supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University,  
716 the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research  
717 Station, including reasonable expenses of the Virginia Agricultural Council.

718 D. One and one-half cents (*\$0.015*) of the tax collected on each gallon of fuel used to propel a  
719 commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game  
720 Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries  
721 until expended for the purposes provided generally in subsection C of § 29.1-701, including acquisition,  
722 construction, improvement and maintenance of public boating access areas on the public waters of this  
723 Commonwealth and for other activities and purposes of direct benefit and interest to the boating public  
724 and for no other purpose. However, one and one-half cents (*\$0.015*) per gallon on fuel used by  
725 commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of  
726 Transportation to be used for the construction, repair, improvement and maintenance of the public docks  
727 of this Commonwealth used by said commercial watercraft. Any expenditures for the acquisition,  
728 construction, improvement and maintenance of the public docks shall be made according to a plan  
729 developed by the Virginia Marine Resources Commission.

730 From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for  
731 the propelling of watercraft, after deduction for lawful refunds *and after deduction for the revenues*  
732 *distributed pursuant to subsection G*, there shall be paid into the state treasury for use by the Marine  
733 Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board,  
734 and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section,  
735 (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 (§ 58.1-2230 *et seq.*) ~~of this chapter~~ and deposited into the Highway Maintenance and Operating Fund.

G. 1. *The additional revenues (less any additional refunds authorized and the direct costs of administration by the Department in collecting such additional revenues) generated by the additional tax under § 58.1-2288.1 shall be collected pursuant to Article 4 (§ 58.1-2230 *et seq.*) and distributed as follows:*

*a. An amount equal to a three percent tax imposed pursuant to § 58.1-2288.1 shall be deposited in the Highway Maintenance and Operating Fund;*

*b. An amount equal to a one percent tax imposed pursuant to § 58.1-2288.1 shall be deposited in the Transportation Trust Fund established pursuant to § 33.1-23.03:1;*

*c. An amount equal to a 0.34 percent tax imposed pursuant to § 58.1-2288.1 shall be deposited in the Intercity Passenger and Rail Operating and Capital Fund established pursuant to § 33.1-221.1:1.3; and*

*d. An amount equal to a 0.66 percent tax imposed pursuant to § 58.1-2288.1 shall be distributed to counties and cities in the Commonwealth. A county or city receiving funds pursuant to this subdivision may expend the funds for any transportation purpose in the locality, but shall not use the funds for any other purpose. Funds shall be credited to the account of each particular county or city based on the same proportions and formulas used to distribute local sales tax pursuant to § 58.1-605.*

2. *For purposes of such deposits pursuant to this subsection, the Commissioner shall provide a monthly certification to the Comptroller reporting the net revenues generated by such tax in the most recently ended month for which such net revenues have been collected. The monthly certification shall be provided to the Comptroller no later than the twenty-fifth of each month. The Comptroller shall deposit an amount equal to each month's net revenues (as reported in the Commissioner's certification) into the funds specified herein no later than the last day of the same month in which the certification was made by the Commissioner.*

**§ 58.1-2289. (Contingent effective date - see Editor's notes) 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~~ *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. One-half cent (\$0.005) of the tax collected on each gallon of fuel on which the refund has been paid at the rate of seventeen cents (\$0.17) per gallon, or in the case of diesel fuel, fifteen and one-half cents (\$0.155) 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. One and one-half cents (\$0.015) 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 (\$0.015) per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this 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 *and after deduction for the revenues distributed pursuant to subsection F*, 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. 1. *The additional revenues (less any additional refunds authorized and the direct costs of administration by the Department in collecting such additional revenues) generated by the additional tax under § 58.1-2288.1 shall be collected pursuant to Article 4 (§ 58.1-2230 et seq.) and distributed as follows:*

a. *An amount equal to a three percent tax imposed pursuant to § 58.1-2288.1. shall be deposited in the Highway Maintenance and Operating Fund;*

b. *An amount equal to a one percent tax imposed pursuant to § 58.1-2288.1 shall be deposited in the Transportation Trust Fund established pursuant to § 33.1-23.03:1;*

c. *An amount equal to a 0.34 percent tax imposed pursuant to § 58.1-2288.1 shall be deposited in the Intercity Passenger and Rail Operating and Capital Fund established pursuant to § 33.1-221.1:1.3; and*

d. *An amount equal to a 0.66 percent tax imposed pursuant to § 58.1-2288.1 shall be distributed to counties and cities in the Commonwealth. A county or city receiving funds pursuant to this subdivision may expended the funds for any transportation purpose in the locality, but shall not use the funds for any other purpose. Funds shall be credited to the account of each particular county or city based on the same proportions and formulas used to distribute local sales tax pursuant to § 58.1-605.*

2. *For purposes of such deposits pursuant to this subsection, the Commissioner shall provide a monthly certification to the Comptroller reporting the net revenues generated by such tax in the most recently ended month for which such net revenues have been collected. The monthly certification shall be provided to the Comptroller no later than the twenty-fifth of each month. The Comptroller shall deposit an amount equal to each month's net revenues (as reported in the Commissioner's certification) into the funds specified herein no later than the last day of the same month in which the certification was made by the Commissioner.*

2. That §§ 58.1-438.1, 58.1-439.1, and 58.1-439.12:02 of the Code of Virginia are repealed, effective

859 for taxable years beginning on or after January 1, 2013. However, nothing in this enactment shall  
860 affect the validity of any credit earned pursuant to § 58.1-438.1, 58.1-439.1, or 58.1-439.12:02 in a  
861 taxable year beginning before January 1, 2013, or the administration thereof.  
862 3. That the Department of Taxation shall develop guidelines concerning the services subject to the  
863 sales tax pursuant to the amendments to § 58.1-603 of the Code of Virginia set forth in this Act.  
864 Such guidelines shall be made available no later than July 1, 2013.

INTRODUCED

SB717