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HOUSE BILL NO. 23

House Amendments in [] — February 3, 2016

A BILL to amend and reenact §§ 58.1-609.1 and 58.1-2259 of the Code of Virginia, relating to refunds of fuels taxes paid by certain nonprofit entities organized with a principal purpose of providing hunger relief services or food to the needy.

Patron Prior to Engrossment—Delegate Farrell

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.1 and 58.1-2259 of the Code of Virginia are amended and reenacted as follows:
§ 58.1-609.1. Governmental and commodities exemptions.

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

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

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

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

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

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

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

b. Fuels transactions upon which a fuel tax is refunded pursuant to subdivision A 22 of § 58.1-2259.

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

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

9. Watercraft as defined in § 58.1-1401.

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

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

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

13. [Expired.]

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

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

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

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

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59 any county, city, or town, or any combination thereof, that is transferred to any of the companies set
60 forth in this subdivision owned, operated, or controlled by any county, city, or town, or any combination
61 thereof, that provides public transportation services.

62 18. (Effective until July 1, 2017) Qualified products designated as Energy Star or WaterSense with a
63 sales price of \$2,500 or less per product purchased for noncommercial home or personal use. The
64 exemption provided by this subdivision shall apply only to sales occurring during the three-day period
65 that begins each year on the first Friday in August and ends at 11:59 p.m. on the following Sunday.

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

73 19. On or after July 1, 2015, but before January 1, 2019, gold, silver, or platinum bullion whose
74 sales price exceeds \$1,000. Each piece of gold, silver, or platinum need not exceed \$1,000, provided
75 that the sales price of one entire transaction of such pieces exceeds \$1,000. "Gold, silver, or platinum
76 bullion" means gold, silver, or platinum, and any combination thereof, that has gone through a refining
77 process and is in a state or condition such that its value depends on its mass and purity and not on its
78 form, numismatic value, or other value. Gold, silver, or platinum bullion may contain other metals or
79 substances, provided that the other substances by themselves have minimal value compared with the
80 value of the gold, silver, or platinum. "Gold, silver, or platinum bullion" does not include jewelry or
81 works of art.

82 **§ 58.1-2259. Fuel uses eligible for refund of taxes paid for motor fuels.**

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

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

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

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

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

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

100 6. Used by any person performing transportation under contract or lease with any transportation
101 district for use in a highway vehicle controlled by a transportation district created under the
102 Transportation District Act of 1964 (§ 33.2-1900 et seq.) and used in providing transit service by the
103 transportation district by contract or lease, provided the refund shall be paid to the person performing
104 such transportation;

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

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

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

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

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

12. Used in operating or propelling the equipment of volunteer firefighting companies and of volunteer emergency medical services agencies within the Commonwealth used actually and necessarily for firefighting and emergency medical services purposes;

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

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

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

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

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

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

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

20. Used in operating stationary engines, or pumping or mixing equipment on a highway vehicle if the fuel used to operate such equipment is stored in an auxiliary tank separate from the fuel tank used to propel the highway vehicle, and the highway vehicle is mechanically incapable of self-propulsion while fuel is being used from the auxiliary tank; ~~or~~

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

22. *Used in operating or propelling highway vehicles owned [~~or operated by or under a contract with~~ by] any entity that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code, as amended or renumbered, and organized with a principal purpose of providing hunger relief services or food to the needy [, if such vehicle is used solely for the purpose of providing hunger relief services or food to the needy] .*

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

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

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

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

Under no circumstances shall a refund be granted more than once for the same fuel. The amount of

182 refund under this subsection shall be equal to the amount of the taxes paid, except refunds granted on
183 the tax paid on fuel used by a taxicab service shall be in an amount equal to the tax paid less \$0.01 per
184 gallon on the fuel used.

185 Any refunds made under this subsection shall be deducted from the urban highway funds allocated to
186 the highway construction district, pursuant to Article 5 (§ 33.2-351 et seq.) of Chapter 3 of Title 33.2, in
187 which the recipient has its principal place of business.

188 Except as otherwise provided in this chapter, all provisions of law applicable to the refund of fuel
189 taxes by the Commissioner generally shall apply to the refunds authorized by this subsection. Any
190 county having withdrawn its roads from the secondary system of state highways under provisions of
191 § 11 of Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is
192 now provided by law with respect to other fuel tax receipts.

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

198 E. Any person purchasing diesel fuel used in operating or propelling a passenger car, a pickup or
199 panel truck, or a truck having a gross vehicle weight rating of 10,000 pounds or less is entitled to a
200 refund of a portion of the taxes paid in an amount equal to the difference between the rate of tax on
201 diesel fuel and the rate of tax on gasoline and gasohol pursuant to § 58.1-2217. For purposes of this
202 subsection, "passenger car," "pickup or panel truck," and "truck" shall have the meaning given in
203 § 46.2-100. Notwithstanding any other provision of law, diesel fuel used in a vehicle upon which the
204 fuels tax has been refunded pursuant to this subsection shall be exempt from the tax imposed under
205 Chapter 6 (§ 58.1-600 et seq.).

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

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