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SENATE BILL NO. 1456

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 31, 2017)

(Patrons Prior to Substitute—Senators Wagner and Petersen [SB 1092])

A BILL to amend and reenact §§ 58.1-2292 and 58.1-2295, as it is currently effective, of the Code of Virginia, relating to the motor vehicle fuels sales tax in certain transportation districts; price floor.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2292 and 58.1-2295, as it is currently effective, of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2292. Definitions.

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

"Alternative fuel" means the same as that term is defined in § 58.1-2201.

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

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

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

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

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

"Gasoline" means the same as that term is defined in § 58.1-2201.

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

"Liquid" means the same as that term is defined in § 58.1-2201.

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

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

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

"Wholesale price" means the same as that term is defined in § 58.1-2201.

§ 58.1-2295. (Contingent expiration date — see note*) Levy; payment of tax.

A. 1. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in any county or city that is a member of (i) any transportation district in which a rapid heavy rail commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass transportation system are owned, operated, or controlled by an agency or commission as defined in § 33.2-1901 or (ii) any transportation district that is subject to subsection C of § 33.2-1915 and that is contiguous to the Northern Virginia Transportation District.

2. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in any county or city that is located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of not less than 1.5 million but fewer than two million, as shown by the most recent United States Census, has not less than 1.2 million but fewer than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million but fewer than 50 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i). In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July

60 1 immediately following the calendar year in which all of the criteria have been met.

61 B. ~~The~~ 1. Prior to July 1, 2017, the tax shall be imposed at a rate of 2.1 percent of the sales price
62 charged by a distributor for fuels sold to a retail dealer for retail sale in any such county or city. In any
63 such sale to a retail dealer in which the distributor and the retail dealer are the same person, the sales
64 price charged by the distributor shall be the cost price to the distributor of the fuel.

65 2. Beginning July 1, 2017, the tax shall be imposed on each gallon of fuel, except for diesel fuel,
66 sold by a distributor to a retail dealer for retail sale in any such county or city at a rate of 2.1 percent
67 of the statewide average wholesale price of a gallon of gasoline, as determined by the Commissioner
68 pursuant to subsection A of § 58.1-2217. Beginning July 1, 2017, the tax shall be imposed on each
69 gallon of diesel fuel sold by a distributor to a retail dealer for retail sale in any such county or city at
70 a rate of 2.1 percent of the statewide average wholesale price of a gallon of diesel fuel, as determined
71 by the Commissioner pursuant to subsection B of § 58.1-2217. In accordance with the provisions of
72 § 58.1-2217, in no case shall the statewide average wholesale price of a gallon of gasoline or diesel
73 fuel used for purposes of determining the amount of tax due under this section be less than the
74 statewide average sales price of a gallon of gasoline or diesel fuel on February 20, 2013. For
75 alternative fuels other than liquid alternative fuels, the Commissioner shall determine an equivalent tax
76 rate based upon gasoline gallon equivalency.

77 C. The tax levied under this section shall be imposed at the time of sale by the distributor to the
78 retail dealer.

79 ~~C.~~ D. The tax imposed by this section shall be paid by the distributor, but the distributor shall
80 separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax
81 shall be a debt from the retail dealer to the distributor until paid and shall be recoverable at law in the
82 same manner as other debts. No action at law or suit in equity under this chapter shall be maintained in
83 the Commonwealth by any distributor who is not registered under § 58.1-2299.2 or is delinquent in the
84 payment of taxes imposed under this chapter.