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SENATE BILL NO. 742

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 9, 2016)

(Patron Prior to Substitute—Senator Wagner)

A BILL to amend and reenact §§ 58.1-2292, 58.1-2295, as it is currently effective, and 58.1-2299.20, as it is currently effective, of the Code of Virginia, relating to the motor vehicle fuels sales tax in certain transportation districts.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2292, 58.1-2295, as it is currently effective, and 58.1-2299.20, 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) 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. Beginning July 1, 2016, the tax under this subsection shall be imposed on each gallon of fuel, except for diesel fuel, sold by a distributor to a retail dealer for retail sale in any such county or city at a rate of three percent of the statewide average wholesale price of a gallon of unleaded regular gasoline as determined by the Commissioner pursuant to § 58.1-2217. Beginning July 1, 2016, the tax under this subsection shall be imposed on each gallon of diesel fuel sold by a distributor to a retail dealer for retail sale in any such county or city at a rate of three percent of the statewide average wholesale price of a gallon of diesel fuel as determined by the Commissioner pursuant to § 58.1-2217. For alternative fuels other than liquid alternative fuels, the Commissioner shall determine an equivalent tax rate based upon gasoline gallon equivalency.

60 *B. 1.* In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every
 61 distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in
 62 any county or city that is located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200
 63 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of not less than 1.5 million but
 64 fewer than two million, as shown by the most recent United States Census, has not less than 1.2 million
 65 but fewer than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less
 66 than 15 million but fewer than 50 million riders per year across all transit systems within the Planning
 67 District or (ii) as shown by the most recent United States Census meets the population criteria set forth
 68 in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i). In any
 69 case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July
 70 1 immediately following the calendar year in which all of the criteria have been met.

71 *B.* The tax shall be imposed at a rate of 2.1 percent of the sales price charged by a distributor for
 72 fuels sold to a retail dealer for retail sale in any such county or city. In any such sale to a retail dealer
 73 in which the distributor and the retail dealer are the same person, the sales price charged by the
 74 distributor shall be the cost price to the distributor of the fuel.

75 *2.* Beginning July 1, 2016, the tax under this subsection shall be imposed as provided in this
 76 subdivision for fuels sold by a distributor to a retail dealer for retail sale in any such county or city.
 77 The tax shall be imposed based on the statewide average wholesale price of a gallon of unleaded
 78 regular gasoline, excluding federal and state excise taxes, as determined by the Commissioner.

Average wholesale price of unleaded regular gasoline	Tax
\$2.50 per gallon and below	\$0.14 per gallon
\$2.51 through \$3.00 per gallon	\$0.08 per gallon
\$3.01 per gallon and above	\$0.05 per gallon

83 *For alternative fuels other than liquid alternative fuels, the Commissioner shall determine an*
 84 *equivalent tax rate based upon gasoline gallon equivalency. In determining the average wholesale price*
 85 *of a gallon of unleaded regular gasoline, the Commissioner shall calculate the average wholesale price*
 86 *each calendar month as a base period for the succeeding applied period beginning two calendar months*
 87 *after the beginning of the base period.*

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

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

96 **§ 58.1-2299.20. (Contingent expiration date) Disposition of tax revenues.**

97 *A.* All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the
 98 sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A
 99 1 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be
 100 deposited in a special fund entitled the "Special Fund Account of the Transportation District of"
 101 The amounts deposited in the special fund shall be distributed monthly to the applicable transportation
 102 district commission of which the county or city is a member to be applied to the operating deficit,
 103 capital, and debt service of the mass transit system of such district or, in the case of a transportation
 104 district subject to the provisions of subsection C of § 33.2-1915, to be applied to and expended for any
 105 transportation purpose of such district. In the case of a jurisdiction which, after July 1, 1989, joins a
 106 transportation district which was established on or before January 1, 1986, and is also subject to
 107 subsection C of § 33.2-1915, the funds collected from that jurisdiction shall be applied to and expended
 108 for any transportation purpose of such jurisdiction. The direct costs of administration shall be credited to
 109 the funds appropriated to the Department.

110 *B.* All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the
 111 sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A
 112 2 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be
 113 deposited into special funds established by law. In the case of Planning District 23, the revenue
 114 generated and collected therein shall be deposited into the fund established in § 33.2-2600. For
 115 additional Planning Districts that may become subject to this section, funds shall be established by
 116 appropriate legislation. The direct cost of administration shall be credited to the funds appropriated to
 117 the Department.