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HOUSE BILL NO. 768

Offered January 10, 2018

Prefiled January 9, 2018

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 regions of the Commonwealth; price floor.*

Patrons—Jones, S.C., Stolle, Thomas, Filler-Corn, Guzman, James, Keam, Levine, Lopez, Torian and Turpin

Referred to Committee on Rules

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) 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

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58 but fewer than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less
59 than 15 million but fewer than 50 million riders per year across all transit systems within the Planning
60 District or (ii) as shown by the most recent United States Census meets the population criteria set forth
61 in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i). In any
62 case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July
63 1 immediately following the calendar year in which all of the criteria have been met.

64 B. ~~The 1. Beginning July 1, 2018, the tax shall be imposed on each gallon of fuel, except for diesel~~
65 ~~fuel, sold by a distributor to a retail dealer for retail sale in any such county or city described in~~
66 ~~subsection A at a rate of 2.1 percent of the sales price charged by a distributor for fuels sold to a retail~~
67 ~~dealer for retail sale in any such county or city. In any such sale to a retail dealer in which the~~
68 ~~distributor and the retail dealer are the same person, the sales price charged by the distributor shall be~~
69 ~~the cost price to the distributor of the fuel statewide average wholesale price of a gallon of unleaded~~
70 ~~regular gasoline as determined by the Commissioner pursuant to subdivision 2 a. Beginning July 1,~~
71 ~~2018, the tax shall be imposed on each gallon of diesel fuel sold by a distributor to a retail dealer for~~
72 ~~retail sale in any such county or city at a rate of 2.1 percent of the statewide average wholesale price~~
73 ~~of a gallon of diesel fuel as determined by the Commissioner pursuant to subdivision 2 b. For~~
74 ~~alternative fuels other than liquid alternative fuels, the Commissioner shall determine an equivalent tax~~
75 ~~rate based upon gasoline gallon equivalency.~~

76 2. a. In computing the average wholesale price of a gallon of unleaded regular gasoline, the
77 Commissioner shall use the period from December 1 through May 31 as the base period for such
78 determination for the immediately following period beginning July 1 and ending December 31, inclusive.
79 The period from June 1 to November 30 shall be the next base period for the immediately following
80 period beginning January 1 and ending June 30, inclusive. If the average wholesale price of a gallon of
81 unleaded regular gasoline computed from a base period to be used for the immediately following
82 applied period is less than the average wholesale price used for the preceding applied period, the
83 average wholesale price for such immediately following period shall remain at the preceding applied
84 period's average wholesale price and shall be used for comparison with the next computed average
85 wholesale price, until such time as the average wholesale price computed is equal to or greater than the
86 statewide average wholesale price of a gallon of unleaded regular gasoline on February 20, 2013. After
87 such time, the statewide average wholesale price of a gallon of unleaded regular gasoline shall be
88 computed pursuant to subsection A of § 58.1-2217.

89 b. In computing the average wholesale price of a gallon of diesel fuel, the Commissioner shall use
90 the period from December 1 through May 31 as the base period for such determination for the
91 immediately following period beginning July 1 and ending December 31, inclusive. The period from
92 June 1 to November 30 shall be the next base period for the immediately following period beginning
93 January 1 and ending June 30, inclusive. If the average wholesale price of a gallon of diesel fuel
94 computed from a base period to be used for the immediately following applied period is less than the
95 average wholesale price used for the preceding applied period, the average wholesale price for such
96 immediately following period shall remain at the preceding applied period's average wholesale price
97 and shall be used for comparison with the next computed average wholesale price, until such time as
98 the average wholesale price computed is equal to or greater than the statewide average wholesale price
99 of a gallon of diesel fuel on February 20, 2013. After such time, the statewide average wholesale price
100 of a gallon of diesel fuel shall be computed pursuant to subsection B of § 58.1-2217.

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

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