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HOUSE BILL NO. 274

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 21, 1996)

(Patron Prior to Substitute—Delegate Parrish)

A *BILL to amend and reenact §§ 58.1-2114, 58.1-2144.1, 58.1-2700, 58.1-2700.1, 58.1-2701, 58.1-2702, 58.1-2706 and 58.1-2711 of the Code of Virginia, relating to fuels taxes.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2114, 58.1-2144.1, 58.1-2700, 58.1-2700.1, 58.1-2701, 58.1-2702, 58.1-2706 and 58.1-2711 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2114. Refunds to certain bus lines and taxicab services; payment.

A. Any person who purchases motor fuel *or diesel fuel* for consumption in highway vehicles used in operating an urban or suburban bus line or a taxicab service within the Commonwealth, or used in regular route service over the highways of this Commonwealth by common carriers of passengers certificated pursuant to § 46.2-2007 shall be entitled to a refund on the tax paid on any such motor fuel *or diesel fuel*. However, no refund shall be granted unless the majority of the passengers utilizing such bus line or taxicab service do so for the purpose of travel for a distance of not more than forty miles, one way, in a single day between their place of abode and their place of employment, shopping areas or schools.

The amount of the refund shall be equal to the amount of the tax paid, except for refunds granted on the tax paid on fuel used by a taxicab service. The refund granted on fuel used by a taxicab service shall be in an amount equal to the tax paid less one cent per gallon on fuel so used.

B. Any person entitled to a refund under subsection A of this section shall file with the Commissioner, on forms prepared and furnished by him, an application, in writing, duly signed by the applicant, and accompanied by a paid ticket or invoice from the dealer or retailer showing such purchase. The application shall set forth: (i) the total amount of fuel purchased; (ii) the total amount of fuel used as provided in subsection A of this section; and (iii) how such fuel was used. The Commissioner, upon the presentation of such application and paid ticket, invoice or other document, shall pay to the applicant from the taxes collected on motor fuel *or diesel fuel*, the refund as provided in subsection A of this section. The application for a refund must be filed with the Commissioner within three months from the date of the sale or invoice.

No refund shall be granted for fuel taxes paid on taxicab services unless the applicant is the holder of a permit from the Department of Motor Vehicles. No such 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. Any refunds made hereunder shall be deducted from the urban highway funds allocated to the highway construction district, pursuant to Article 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title 33.1, in which the recipient has its principal place of business.

C. Except as otherwise provided in this chapter, all provisions of law applicable to the refund of ~~gasoline taxes and other~~ motor fuel *or diesel* fuel taxes by the Commissioner shall apply to the refunds authorized by this section. Any city, town or county having withdrawn its roads from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is now provided by law with respect to ~~other~~ motor fuel *or diesel fuel* tax receipts.

§ 58.1-2144.1. Civil penalty for improper sale for use, or use of, dyed diesel fuel.

A. If any person commits any of the following acts, he shall be subject to the civil penalty specified in subsection B:

1. Selling or storing any dyed diesel fuel for any use which the person selling or storing knows, or has reason to know, is a taxable use of the fuel;

2. Willfully altering or attempting to alter the strength or composition of any dye or marker in any dyed diesel fuel intended to be used for a taxable purpose; or

3. Using dyed diesel fuel for a taxable purpose.

B. The amount of penalty for each violation shall be the greater of \$1,000 or \$10 per gallon of dyed diesel fuel, based on the maximum storage capacity of the storage tank. Any penalty imposed by this section shall be payable by the person committing such act, shall be in addition to the tax due, and shall be collectible by the Commissioner in the same manner as if it were a part of the tax imposed. *The Commissioner shall have the power to reduce or waive any penalties provided in this section if the violation is due to reasonable or good cause shown to the satisfaction of the Commissioner.*

§ 58.1-2700. (Effective January 1, 1996) Definitions.

Whenever used in this chapter, the term:

60 "Carrier" means a person who operates or causes to be operated a commercial ~~motor~~ highway vehicle
61 on any highway in the Commonwealth.

62 "Department" means the Department of Motor Vehicles, acting through its officers and agents.

63 "Identification marker" means a decal issued by the Department to show that a vehicle operated by a
64 carrier is properly registered with the Department for the payment of the road tax.

65 "IFTA" means the International Fuel Tax Agreement, as entered into by the Department, and as
66 amended by the International Fuel Tax Association, Inc.

67 "Licensee" means a carrier who holds an uncanceled IFTA license issued by the Commonwealth.

68 "Motor carrier" means every person, firm or corporation who owns or operates or causes to be
69 operated on any highway in this Commonwealth any qualified ~~motor~~ highway vehicle.

70 "Operations" means the physical activities of all such vehicles, whether loaded or empty, whether for
71 compensation or not for compensation, and whether owned by or leased to the motor carrier who
72 operates them or causes them to be operated.

73 "Qualified ~~motor~~ highway vehicle" means a ~~motor~~ highway vehicle used, designed, or maintained for
74 transportation of persons or property that (i) has two axles and a gross vehicle weight or registered gross
75 vehicle weight exceeding 26,000 pounds or 11,797 kilograms, (ii) has three or more axles regardless of
76 weight, or (iii) is used in combination, when the weight of such combination exceeds 26,000 pounds or
77 11,797 kilograms gross vehicle or registered gross vehicle weight. "Qualified ~~motor~~ highway vehicle"
78 does not include recreational vehicles.

79 § 58.1-2700.1. Interstate motor carrier road tax.

80 In accordance with the provisions of IFTA, as amended, the Department shall issue a license and
81 vehicle identification markers to each carrier that operates qualified ~~motor~~ highway vehicles in the
82 Commonwealth and at least one other jurisdiction participating in IFTA so as to report its road tax
83 liabilities. The Department shall issue vehicle identification markers to carriers that operate qualified
84 ~~motor~~ highway vehicles in the Commonwealth solely, or in the Commonwealth and at least one other
85 jurisdiction not participating in IFTA. Each application shall contain the name and address of the carrier,
86 and such other information as may be required by the Department.

87 The Department shall issue to the motor carrier identification markers for each vehicle in the carrier's
88 fleet that will be operated within the Commonwealth.

89 The identification markers issued to the vehicles of the IFTA-licensed carriers shall expire on
90 December 31 of each year. All other identification markers issued to carriers shall expire on June 30 of
91 each year. The identification markers may be renewed prior to expiration provided (i) the carrier's
92 privilege to operate vehicles in the Commonwealth has not been revoked or canceled, (ii) all required
93 tax reports have been filed, and (iii) all road taxes, penalties, and interest due have been paid.

94 The cost of the identification markers issued to each vehicle in the carrier's fleet shall be ten dollars
95 per vehicle.

96 In an emergency, the Department may, by letter, telegram, or other electronic means, authorize a
97 vehicle to be operated without identification markers for not more than ten days. Before sending such
98 authorization, the Department shall collect from the carrier a fee of twenty dollars for each vehicle so
99 operated.

100 § 58.1-2701. Amount of tax.

101 Every motor carrier of property shall pay a road tax equivalent to nineteen and one-half cents per
102 gallon calculated on the amount of ~~gasoline~~ motor fuel, diesel fuel or liquefied gases (which would not
103 exist as liquids at a temperature of sixty degrees F. and a pressure of 14.7 pounds per square inch
104 absolute), or other motor fuel used in its operations within the Commonwealth.

105 The tax imposed by this chapter shall be in addition to all other taxes of whatever character imposed
106 on a motor carrier by any other provision of law.

107 All taxes paid under the provisions of this chapter shall be credited to the Highway Maintenance and
108 Construction Fund.

109 § 58.1-2702. (Effective January 1, 1996) Exemptions and exceptions.

110 The provisions of this chapter shall not apply to a person, firm or corporation owning or operating:

111 1. A single recreational vehicle;

112 2. The first two Virginia-licensed trucks, if used exclusively for farm use as defined in § 46.2-698
113 and if not licensed in any other state;

114 3. Qualified ~~motor~~ highway vehicles of a licensed ~~motor~~ highway vehicle dealer when operated without
115 compensation for purposes incident to a sale or for demonstration; or

116 4. Any ~~motor~~ highway vehicle owned and operated by the United States, the District of Columbia, the
117 Commonwealth of Virginia or any municipality or any other political subdivision of the Commonwealth,
118 or any other state.

119 § 58.1-2706. Credit for payment of motor fuel or diesel fuel tax.

120 A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax equivalent to
121 sixteen cents per gallon on all ~~gasoline~~ or other motor fuel or diesel fuel or ten cents per gallon on

liquefied gases purchased by such carrier within the Commonwealth for use in its operations either within or without the Commonwealth and upon which ~~gasoline or other~~ motor fuel, *diesel fuel or liquefied gases* the tax imposed by the laws of the Commonwealth has been paid by such carrier. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the Department shall be furnished by each carrier claiming the credit herein allowed.

B. When the amount of the credit to which any motor carrier is entitled for any quarter exceeds the amount of the tax for which such carrier is liable for the same quarter, the excess may: (i) be allowed as a credit on the tax for which such carrier would be otherwise liable for any of the eight succeeding quarters or (ii) be refunded, upon application, duly verified and presented and supported by such evidence as may be satisfactory to the Department.

C. The Department may allow a refund upon receipt of proper application and review. It shall be at the discretion of the Department to determine whether an audit is required.

D. The refund may be allowed without a formal hearing if the amount of refund is agreed to by the applicant. Otherwise, a formal hearing on the application shall be held by the Department after notice of not less than ten days to the applicant and the Attorney General.

E. Whenever any refund is ordered it shall be paid out of the Highway Maintenance and Construction Fund.

F. Whenever a person operating under lease to a motor carrier to perform transport services on behalf of the carrier purchases ~~gasoline or other~~ motor fuel, *diesel fuel or liquefied gases* relating to such services, such payments or purchases may, at the discretion of the Department, be considered payment or purchases by the carrier.

§ 58.1-2711. Assistance of Department of Taxation.

At the request of the Department, the Department of Taxation shall furnish the Department the amount of deduction from income taken by any person conducting business as a motor carrier as defined in § 58.1-2700 on account of the purchase of ~~gasoline or other~~ motor fuel, *diesel fuel or liquefied gases*.

2. That an emergency exists and this act is in force from its passage.