

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 731

An Act to amend and reenact §§ 58.1-2101, 58.1-2114, 58.1-2118, 58.1-2135, 58.1-3941 and 58.1-3942 of the Code of Virginia, relating to fuels tax and licenses.

[H 2428]

Approved March 22, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2101, 58.1-2114, 58.1-2118, 58.1-2135, 58.1-3941 and 58.1-3942 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2101. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Aircraft" means any kind of vehicle designed or used for untethered navigation or flight in the air.

"Assessment" means a written determination by the Department of Motor Vehicles of the amount of taxes owed by a taxpayer. Assessments made by the Department of Motor Vehicles shall be deemed to be made when a written notice of assessment is delivered to the taxpayer by the Department of Motor Vehicles or is mailed by certified or registered mail to the taxpayer at his last known address.

"Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation special fuel in any fiscal year and is licensed pursuant to § 58.1-2135.

"Aviation motor fuel" means motor fuel designed for use in the operation of aircraft, and sold or used for that purpose.

"Aviation fuel user" means any person, other than an "aviation consumer," who receives, uses, or stores aviation special fuel.

"Aviation special fuel" means fuel designed for use in the operation of turbine-powered aircraft, and sold or used for that purpose. The term shall not include aviation motor fuel.

"Blended fuel" means fuel produced by blending regular gasoline with premium gasoline to produce mid-grade gasoline; fuel produced by blending ethanol into gasoline; fuel produced by blending kerosene into dyed or undyed diesel fuel to reduce pour point; or fuel produced by blending additives into dyed or undyed diesel fuel.

"Blender" means any person that produces blended fuel.

"Blending" means the mixing of one or more petroleum products with another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a highway vehicle, an airplane, or a motorboat. This term does not include blending which occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oils and greases.

"Bonded aviation fuel" means aviation special fuel held in bonded storage under United States Customs Law and delivered into the fuel supply ~~tank~~ tanks of aircraft operated by certificated air carriers on international flights.

"Bulk plant" means a fuel storage facility, other than a terminal, which is used primarily for redistribution of fuel.

"Bulk storage" means a storage of fuel in bulk quantities.

"Bulk user" means any person who maintains bulk storage facilities for the purpose of fueling aircraft or highway vehicles owned, leased or operated by him.

"Clean special fuels" means all products or energy sources used to propel a highway vehicle which, when compared to conventional gasoline or reformulated gasoline, will result in lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide or particulates or any combination thereof, and includes compressed natural gas, liquified natural gas, liquified petroleum gas, hydrogen, hythane (a combination of compressed natural gas and hydrogen) and electricity.

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

"Conduit" means any person licensed to sell petroleum products in another state or jurisdiction who is authorized by that state or jurisdiction to collect Virginia fuels taxes. The person may or may not be licensed to operate as a Virginia fuel tax licensee.

"Corporate or partnership officer" means an officer or director of a corporation, or partner of a partnership, or member of a limited liability company, who as such officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax collection, accounting, or remitting obligations.

"Dealer" means and includes the following persons, required to be licensed as a dealer pursuant to § 58.1-2135:

(a) 1.A person who imports, or causes to be imported, into the Commonwealth any motor fuel for use by or distribution or sale and delivery to another in the Commonwealth.

(b) 2. A person who imports, or causes to be imported, into the Commonwealth any motor fuel for his own use in any container other than the usual tank or receptacle connected with the engine of the highway vehicle which will consume such motor fuel during its operation.

(c) 3. A person selling over one-half million gallons of motor fuel in any calendar year who elects to be licensed as a dealer.

(d) 4. A person who maintains and operates a bulk storage within the Commonwealth who receives motor fuel by tank car, barge, pipeline delivery, common or contract carrier or self-owned equipment from another point within the Commonwealth.

(e) 5. A person who produces, refines, manufactures, blends, or compounds any motor fuel in the Commonwealth for use, distribution or sale and delivery in the Commonwealth.

(f) 6. A person who produces, refines, manufactures, blends, or compounds motor fuel in the Commonwealth for his own use.

The term "dealer" shall not include a railroad company purchasing motor fuel for use in its railroad business and not for use in highway vehicles. The Commissioner may designate dealers as jobbers, but the designation by the Commissioner of a dealer as a jobber shall not of itself deprive the jobber of the right to refunds to which they would have otherwise been entitled under the provisions of subdivision 3 of subsection B of § 58.1-2111.

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

"Destination state" means the state for which a tanker truck or barge is destined to off-load the fuel it is transporting into storage facilities for purposes of resale or consumption in such state.

"Diesel fuel" means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle or diesel-powered boat. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or boat. *Low sulfur diesel fuel contains no more than .05 percent sulfur by weight content.*

"Dyed diesel fuel" means any diesel fuel that is required to be dyed in accordance with any rule, regulation, or mandate of the United States Environmental Protection Agency or the Internal Revenue Service.

"Exemption certificate" means a ~~serially-numbered~~ *serially numbered* certificate approved and issued by the Commissioner, which is to be affixed on bulk storage facilities of resellers and bulk users of diesel fuel for the purpose of exempting fuel delivered therein from the fuel tax due to the nonhighway use of such fuel.

"Export" means (i) fuel delivered out of state by or for the seller constitutes an export by the seller or (ii) fuel delivered out of state by or for the purchaser constitutes an export by the purchaser.

"Exporter" means any person, other than a dealer or supplier, who purchases fuel in the Commonwealth for the purpose of transporting or delivering such fuel to another state, district or country. This definition does not apply to fuel transported outside of the Commonwealth in the fuel supply tank of a highway vehicle or aircraft. Such a person is required to be licensed in Virginia as an exporter pursuant to § 58.1-2135 and to submit monthly reports pursuant to § 58.1-2109.1 or § 58.1-2120.3.

"Fuel" or "fuels" means all combustible gases and liquids used or suitable for use in an internal combustion engine or motor for the generation of power to propel highway vehicles or aircraft. The terms shall include motor fuel, diesel fuel, aviation motor fuel, aviation special fuel, and clean special fuels.

"Heating oil" means any combustible liquid, including but not limited to #1 fuel oil, #2 fuel oil, and kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial processing purposes.

"Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.

"Highway vehicle" means any vehicle operated, or intended to be operated, on a highway. The term does not include: (i) farm machinery including machinery designed for off-road use but capable of movement on roads at low speeds; (ii) a vehicle operated on rails; or (iii) machinery designed principally for off-road use.

"Import" means (i) fuel delivered into Virginia from out of state by or for the seller constitutes an import by the seller or (ii) fuel delivered into Virginia from out of state by or for the purchaser constitutes an import by the purchaser.

"Importer" means any person who imports fuel. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is not an importer of record, the owner of the fuel at the time it is brought into the Commonwealth is the importer. Any person who imports fuel is required to be licensed as a dealer or a supplier.

"Jobber" means any person who receives motor fuel by tank car, barge, pipeline, common or contract carrier or in self-owned equipment from a point within Virginia who has not qualified to pay the motor fuel tax directly to the Commonwealth, if such person complies with all of the applicable provisions of this chapter.

"Licensee" means any person licensed by the Commissioner pursuant to § 58.1-2135.

"Liquid" means any substance which is liquid at temperatures in excess of sixty degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

"Motor fuel" means all products commonly or commercially known, advertised, offered for sale, sold or used as gasoline, including casinghead or natural gasoline. The term shall include all other types of additives when such additives are mixed or blended into gasoline, regardless of their classifications or uses.

"Principal" means (i) in the case of a partnership, all the partners; (ii) in the case of a corporation, all its officers, directors, and controlling owners; and (iii) in the case of a limited liability company, all its members.

"Refiner" means any person that owns, operates, or otherwise controls a refinery.

"Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum products which are capable of use as fuel.

"Reseller" means any person, other than a "supplier," who sells or delivers diesel fuel, aviation special fuel, and clean special fuels into a fuel supply tank of an aircraft or highway vehicle other than an aircraft or highway vehicle owned or operated by such person and shall include any person selling fuel sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders and other similar agencies located on United States military or other reservations within the boundaries of the Commonwealth, unless such fuel is for the exclusive use of the United States or its departments, agencies and instrumentalities.

"Supplier" means any person who is an exporter of diesel fuel, aviation special fuel, or clean special fuels; sells or delivers diesel fuel, aviation special fuel, or clean special fuels to a "reseller" or "bulk user" for resale or use in any highway vehicle or aircraft; or assumes the responsibility and liability for the payment of the tax. The term includes any person who imports diesel fuel, aviation special fuel, or clean special fuels into the Commonwealth, for use in a highway vehicle or aircraft owned or operated by such person, other than in the usual tank or receptacle connected with the engine of the highway vehicle or aircraft in which the fuel is to be consumed.

"Synthetic motor fuel" means motor fuel containing at least twenty percent coal-based liquids blended to meet fuel specifications.

"Synthetic special fuel" means fuel containing at least twenty percent coal-based liquids blended to meet specifications.

"Taxable fuel" means motor fuel, undyed diesel fuel with the exception of kerosene, aviation special fuel, clean special fuels, synthetic motor fuel, synthetic special fuel, ethanol and blends thereof and any other substance blended with any of the foregoing, to include kerosene or #1 fuel oil when used in a highway vehicle.

"Terminal" means a fuel storage and distribution facility which is supplied by pipeline, marine vessel, or rail car and from which fuel may be removed at the rack. The term does not include any facility at which fuel blend stocks and additives are used in the manufacture of products other than fuel and from which no fuel is removed.

"Terminal operator" means any person that owns, operates, or otherwise controls a terminal.

"Use" means the actual consumption or receipt of fuel by any person into an aircraft or highway vehicle.

"User" means any person who (i) does not maintain storage facilities for fueling aircraft or highway vehicles and (ii) owns or operates any aircraft or highway vehicle having a gross weight in excess of 5,000 pounds which is propelled by diesel fuel, aviation special fuel, or clean special fuels and is licensed under the laws of the Commonwealth.

§ 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~~ 46.2-2004 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 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 motor fuel ~~or diesel fuel~~ tax receipts.

§ 58.1-2118. Exemptions from tax.

No tax shall be levied or collected pursuant to this article on:

1. Diesel fuel, aviation special fuel, and clean special fuels sold to the United States or its departments, agencies and instrumentalities for the exclusive use by the United States or its departments, agencies and instrumentalities thereof;

2. Diesel fuel, aviation special fuel, and clean special fuels sold to the Commonwealth of Virginia or any political subdivision for the exclusive use by the Commonwealth or any political subdivision thereof;

3. Diesel fuel and clean special fuels sold to any volunteer fire-fighting company or volunteer rescue squad within the Commonwealth for use in equipment used for fire-fighting or rescue purposes;

4. Aviation special fuel sold to aviation consumers or to nonprofit charitable organizations which are exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and which are organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air ambulance services for low-income medical patients in the Commonwealth;

5. Liquid petroleum gas, commonly referred to as "LP gas" or "propane gas," sold or delivered to any licensed reseller or bulk user that does not own or operate a highway vehicle propelled by liquified petroleum gas or maintain storage facilities for resale or delivery of such fuel for highway consumption;

6. Diesel fuel delivered into bulk storage facilities of any licensed reseller or bulk user which have an exemption certificate affixed thereto; or

7. (i) Dyed diesel fuel used for purposes other than to propel highway vehicles and (ii) *dyed low sulfur diesel fuel used in operating urban or suburban bus lines, as well as in regular route service over the highways of the Commonwealth by common carriers of passengers certified pursuant to § 46.2-2004.*

As used in this section, "exclusive use" shall be construed to exclude the use of fuel by any person, whether operating under contract or not, if the original purchase by such person from a supplier would have rendered the supplier liable for the payment of fuel taxes under the laws of this Commonwealth.

§ 58.1-2135. Requirement of license; application; bond.

A. Every dealer, jobber, supplier, reseller, bulk user, exporter or aviation consumer desiring to receive, use, sell, store, distribute, export or transport any fuel or to engage in such business within the Commonwealth shall file with the Commissioner an application for a license to engage in such business, in such form as the Commissioner may prescribe, including, but not limited to:

1. The name under which the applicant will transact business within the Commonwealth;

2. The location, with street number address, of the applicant's principal office or place of business within the Commonwealth; and

3. The name and complete residence address of the owner or the names and addresses of the partners, or principal officers, if such applicant is a partnership, corporation or association. If the applicant is a corporation organized under the laws of another state, territory or country, such applicant shall also file with the application a certified copy of the certificate or license issued by the State Corporation Commission showing that the corporation is authorized to transact business in the Commonwealth.

B. No license shall be issued to an exporter unless the exporter demonstrates that he is also licensed in the states to which he exports.

C. The Commissioner may license any person either as a supplier, reseller, bulk user, exporter or aviation consumer, whichever is in the best interests of the Commonwealth; however, no person shall be required to be licensed in more than one such category.

D. A background investigation, to include a National Criminal Records search and a Virginia Criminal History Records search, may be conducted on all applicants for licensure. The Commissioner may refuse to issue a license to any applicant (i) found guilty of any fraud or misrepresentation in any connection or (ii) convicted of any felony involving crimes of moral turpitude. If the applicant is a partnership, corporation, or limited liability company, the Commissioner may refuse to issue a license to

any applicant with a principal who has been (i) found guilty of any fraud or misrepresentation in any connection or (ii) convicted of any crime substantially related to one's fitness to conduct a fuel ~~oil~~ distribution business. The Department may charge the applicant a fee of \$100 to defray its administrative costs for conducting said National Criminal Records and Virginia Criminal History Records searches. Such fees shall be paid into the state treasury and set aside as a special fund to be used to meet the expenses of the Department.

E. No license shall be issued upon any application unless accompanied by such bond or other security as provided by § 58.1-2136. The bond or other security shall be in an amount to be determined upon investigation by the Commissioner to be approximately three times the anticipated average monthly fuel tax to become due by the applicant during the next succeeding three calendar months. In no event shall the amount of any bond or other security filed in lieu of such bond be less than \$2,000. In case of a jobber who incurs no tax liability to the ~~Division~~ Department, the amount of bond or other security shall be \$1,000.

On and after July 1, 1993, applicants for licenses shall be subject to a maximum bond or other security of not more than \$150,000 for each license issued. Licensees holding a license prior to July 1, 1993, shall be subject to a maximum bond or other security of not more than \$100,000 for each license issued. Licensees on and after July 1, 1993, may be required by the Commissioner to increase their bond or other security to \$150,000 if the Commissioner, in his sole discretion, determines that (i) their prior payment or reporting history is unsatisfactory or (ii) their financial stability is questionable.

The Commissioner, in his discretion, may reduce the amount of the required bonds as long as he is satisfied that payment of the tax collected on behalf of the Commonwealth will not be jeopardized. Among the factors the Commissioner may consider in making such a determination shall include, but not be limited to, the licensee's prior satisfactory payment record and continuing financial stability.

F. The bond shall be in such form as may be approved by the Commissioner and shall be payable to the Commonwealth. Such bond shall be executed by a surety company duly licensed to do business under the laws of the Commonwealth, approved by the Bureau of Insurance of the State Corporation Commission and signed by a resident Virginia agent of the surety. The bond or other security as provided for in § 58.1-2136 shall be conditioned upon the prompt filing of true reports and the payment by such dealer, supplier or aviation consumer to the Commissioner of all fuel taxes which are now or which may hereafter be levied or imposed by the Commonwealth, together with all penalties, and interest thereon, and generally upon faithful compliance with the provisions of this chapter. Such bond shall be so written that, upon timely payment of the premium, it shall continue in force from year to year unless sooner terminated as provided by law.

G. Except as provided in § 58.1-2137 upon receipt of an application in proper form, and upon acceptance and approval of the bond or other security, the Commissioner shall issue to the applicant a license certificate to transact business in the Commonwealth, subject to cancellation of such license as provided by law. However, any licensee shall forthwith furnish the Commissioner information of any changes in the original application.

H. The license certificate so issued by the Commissioner shall not be assignable, and shall be valid only for the applicant in whose name it is issued. It shall be conspicuously displayed at all times in the principal place of business of the licensee in the Commonwealth.

I. The Commissioner shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensees. The Commissioner shall, upon request, furnish each licensee a list showing the name and business address of each licensed reseller, bulk user, supplier, dealer, and aviation consumer. The Commissioner shall supply such lists as of the beginning of each fiscal year, and shall thereafter, during such year, supplement such lists monthly.

§ 58.1-3941. What may be distrained for taxes.

Any goods or chattels, money and bank notes in the county, city or town belonging to the person or estate assessed with taxes or levies may be distrained therefor by the treasurer, sheriff, constable or collector. Property subject to levy or distress for taxes shall be liable to levy or distress in the hands of any person for taxes, penalties and interest thereon, except that any ~~motor~~ highway vehicle as defined in § 58.1-2101 purchased by a bona fide purchaser for value shall not be liable to levy or distress for such taxes unless the purchaser knew at the time of purchase that the taxes had been specifically assessed against such vehicle.

Property on which taxes were not specifically assessed shall not be subject to distress after it passes into the hands of a bona fide purchaser for value.

§ 58.1-3942. Security interests no bar to distress.

No security interest in goods or chattels shall prevent the same from being distrained and sold for taxes or levies assessed thereon, no matter in whose possession they may be found.

Prior to such sale for distress, the treasurer, sheriff, constable or collector, or other party conducting the sale shall give notice to any secured party of record as his name and address shall appear on the records of the Department of Motor Vehicles, the Department of Game and Inland Fisheries, the State Corporation Commission, or in the office of the clerk of any circuit court where the debtor has resided to the knowledge of the party to whom the tax is owing during a one-year period prior to the sale.

Notice shall also be given to any secured party of whom the party to whom the tax is owing shall have knowledge.

A security interest perfected prior to any distraint for taxes shall have priority over all taxes, except those specifically assessed either per item or in bulk against the goods and chattels distrained. Taxes specifically assessed either per item or in bulk against the goods and chattels distrained shall have priority over all security interests. For purposes of this section a merchant's capital tax shall be deemed to be specifically assessed against all inventory in the merchant's possession at the time of distraint, or at the time such inventory is repossessed by the holder of a security interest therein. For purposes of this section, taxes specifically assessed in bulk means an assessment against the specific class of property distrained.

Notwithstanding any provision of this section to the contrary, no ~~motor~~ highway vehicle as defined in § 58.1-2101 purchased by a bona fide purchaser for value from the person or estate assessed with taxes shall be liable to levy or distress for such taxes unless the purchaser knew at the time of purchase that the taxes had been specifically assessed against such vehicle.