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HOUSE BILL NO. 1705

Offered January 8, 1997

A *BILL to amend and reenact §§ 58.1-2101 and 58.1-2122 of the Code of Virginia, relating to fuels taxes.*

Patron—Parrish

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-2101 and 58.1-2122 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:

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HB1705

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

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

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

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

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

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

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

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

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

83 "Diesel fuel" means any liquid that is commonly or commercially known or sold as a fuel that is
84 suitable for use in a diesel-powered highway vehicle or diesel-powered boat. A liquid meets this
85 requirement if, without further processing or blending, the liquid has practical and commercial fitness for
86 use in the propulsion engine of a diesel-powered highway vehicle or boat.

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

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

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

96 "Exporter" means any person, other than a dealer or supplier, who purchases fuel in the
97 Commonwealth for the purpose of transporting or delivering such fuel to another state, district or
98 country. This definition does not apply to fuel transported outside of the Commonwealth in the fuel
99 supply tank of a highway vehicle or aircraft. Such a person is required to be licensed in Virginia as an
100 exporter pursuant to § 58.1-2135 and to submit monthly reports pursuant to § 58.1-2109.1 or
101 § 58.1-2120.3.

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

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

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

110 "Highway vehicle" means any vehicle operated, or intended to be operated, on a highway. The term
111 does not include: (i) farm machinery including machinery designed for off-road use but capable of
112 movement on roads at low speeds; (ii) a vehicle operated on rails; ~~or~~ (iii) machinery designed
113 principally for off-road use; (iv) *self-propelled equipment manufactured for a specific off-road purpose,*
114 *which is used on a job site and the movement of which on any highway is incidental to the purpose for*
115 *which it was designed and manufactured; or (v) a vehicle operated on the highway and exempt from*
116 *registration requirements pursuant to §§ 46.2-663 through 46.2-667 and 46.2-669 through 46.2-684.*

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

120 "Importer" means any person who imports fuel. If the importer of record is acting as an agent, the
121 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.

§ 58.1-2122. Refund of tax on fuels.

Any person other than a person to whom § 58.1-2124 applies, who pays the tax at the rate of sixteen cents per gallon on the purchase of any fuel in quantities of five gallons or more at any one time shall be entitled to a refund in the amount of the tax paid if:

1. *Such fuel is used off-highway in equipment as defined in clause (iv) of the definition of "highway vehicle" in § 58.1-2101.*

2. *Except for equipment described in subdivision 1, such fuel is used (i) for purposes other than to propel highway vehicles, (ii) by buses owned or solely used by a private, nonprofit, nonsectarian school while being used to transport children to and from such school or from such school to and from*

183 educational or athletic activities, or (iii) by any private, nonprofit area agency on aging, designated by
184 the Department for the Aging, providing transportation services to citizens in vehicles owned, leased,
185 operated or under contract by such area agency;

186 2. 3. Such fuel has been lost by accident, except through personal negligence or theft;

187 3. 4. Such fuel was used by any county or city school board or any private, nonprofit nonsectarian
188 school contracting with a private carrier to transport children to and from public schools or any private
189 schools or any private nonsectarian school; or

190 4. 5. Such fuel was (i) sold to any corporation, partnership or other entity performing transportation
191 under contract or lease with any transportation district and (ii) used in a highway vehicle controlled by a
192 transportation district created under the Transportation District Act of 1964, which highway vehicle is
193 used in providing transit service by the transportation district by contract or lease. The refund provided
194 for in this ~~paragraph~~ subdivision shall be paid to the corporation, partnership or other entity performing
195 such transportation.

196 The total refunds allowed to any one applicant in all cases pursuant to clause (ii) of subdivision 42
197 of this section with respect to fuel which is subject to the tax imposed by this chapter shall not exceed
198 the sum of \$2,000 in any fiscal year.

199 ~~Application~~ *The application* for a refund shall show the purpose for which the fuel was used, and
200 shall be accompanied by the invoice covering the sale of the fuel to such person. In the event an
201 assessment is rendered for failure to report and pay any tax imposed by § 58.1-2116 and such fuel has
202 been used for nonhighway purposes by the consumer, application for refund may be filed with the
203 Commissioner by the consumer within twelve months from the date such assessment is paid and shall be
204 accompanied by invoices covering the sale of the fuel and the billing of the tax to such person.

205 5. Refunds shall be issued by the Commissioner when he determines that a Virginia licensee's
206 tax-paid purchases from a conduit exceed their taxable distribution in Virginia. No refund shall be
207 granted by the Commissioner unless the Department has deposited the licensee's tax payment for the tax
208 period that immediately precedes the request for a refund and that payment has cleared bank processing.
209 Refunds shall be reduced or denied by the Commissioner if the licensee has outstanding taxes, penalties
210 or interest due the Department.