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## SENATE BILL NO. 1129

Offered January 20, 1997

*A BILL to amend and reenact §§ 58.1-2105, 58.1-2113, 58.1-2116, 58.1-2122, 58.1-2124, 58.1-2146, 58.1-2701, and 58.1-2706 of the Code of Virginia, relating to the taxes levied on motor fuel and diesel fuel.*

\_\_\_\_\_  
Patron—Marye

\_\_\_\_\_  
Referred to the Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-2105, 58.1-2113, 58.1-2116, 58.1-2122, 58.1-2124, 58.1-2146, 58.1-2701, and 58.1-2706 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-2105. Levy of tax on all motor fuels.

A. Except as provided in subsection C, there is hereby levied a tax at the rate of ~~seventeen~~ *seventeen* ~~twenty-two~~ and one-half cents per gallon on all motor fuel, except aviation motor fuel, sold and delivered or used in this Commonwealth. The tax shall be levied on all motor 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. The tax herein imposed and assessed shall be collected by and paid to the Commonwealth but once in respect to any motor fuel. Nothing herein shall be construed to exempt from this tax any dealer in motor fuel on the motor fuel used in making such distribution.

B. A tax at the rate of five cents per gallon is hereby levied on all aviation motor fuel which is sold and delivered or used in Virginia. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation fuel taxable under this chapter shall be liable for the tax at the rate of ~~seventeen~~ *seventeen* ~~twenty-two~~ and one-half cents per gallon, along with any penalties and interest which may accrue.

C. Upon application to and approval by the Commissioner, any producer of synthetic motor fuel produced from coal in a county with a population between 19,000 and 51,000 as determined by the 1980 U.S. Census shall be subject to tax as set forth in this subsection:

1. For the first three years of production, the tax shall be three cents per gallon;
2. For the fourth year of production, the tax shall be nine cents per gallon;
3. For the fifth year of production, the tax shall be eleven and one-half cents per gallon;
4. For the sixth and seventh years of production, the tax shall be thirteen and one-half cents per gallon;
5. For the eighth and ninth years of production, the tax shall be fifteen and one-half cents per gallon;

and

6. Beginning in the tenth year of production and thereafter, the tax shall be at the rate prescribed in subsection A. The total number of gallons of synthetic motor fuel and synthetic special fuel subject to tax in *this* subsection ~~€ of this section~~ and subsection D of § 58.1-2116 shall not exceed twenty-five million gallons per fiscal year.

D. Any dealer who collects the tax on motor fuel shall be liable for the payment thereof to the Department of Motor Vehicles.

§ 58.1-2113. Payment of refund; amount.

A. Except as otherwise provided in this section, any person who paid the tax upon motor fuel at the time of its purchase shall be paid a refund, if entitled, pursuant to § 58.1-2111 for the amount of such tax.

B. If the applicant for refund includes with the application a statement that the fuel was used for agricultural purposes, the Commissioner shall refund to the applicant ~~seventeen~~ *seventeen* ~~twenty-two~~ cents per gallon on all such motor fuel. One-half cent per gallon on such fuel so used shall be paid by the Commissioner into the state treasury to the credit of the Virginia Agricultural Foundation Fund.

C. If the applicant for refund of motor fuel tax collected pursuant to this chapter includes with the application a statement that the fuel was used for propelling a commercial boat or ship, the Commissioner shall refund to the applicant ~~sixteen~~ *sixteen* ~~twenty-one~~ cents per gallon on all such motor fuel. The Commissioner shall pay the remaining one and one-half cents into the state treasury to be expended pursuant to subsection D of § 58.1-2146. If any applicant so requests, the Commissioner shall pay into the state treasury, to the credit of the Game Protection Fund, the entire ~~seventeen~~ *seventeen* ~~twenty-two~~ and one-half cents per gallon tax paid by such applicant for the purposes specified in subsection D of § 58.1-2146. If

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60 any applicant, who is an operator of commercial boats, so requests, the Commissioner shall pay into the  
61 state treasury, to the credit of the Marine Fishing Improvement Fund, the entire ~~seventeen~~ *twenty-two* and  
62 one-half cents per gallon tax paid by such applicant for the purposes specified in § 28.2-208.

63 D. A dealer entitled to a refund pursuant to subdivision B 3 of § 58.1-2111 shall receive a refund  
64 equal to one percent of the tax passed on to him on the gross gallonage of motor fuel transferred, in  
65 consideration of shrinkage and evaporation. No dealer shall receive more than one such refund and not  
66 more than one such refund shall be paid on the transfer of the same motor fuel.

67 § 58.1-2116. Levy of tax; liability for tax.

68 A. Except as otherwise provided in subsections B, C, D, and E, there is hereby levied a tax at the  
69 rate of ~~sixteen~~ *twenty-one* cents per gallon upon all diesel fuel:

- 70 1. Sold or delivered by any supplier into a bulk storage facility of any licensed reseller or bulk user;
- 71 2. Used by any supplier in any highway vehicle owned, leased, or operated by him;
- 72 3. Delivered by a supplier directly into the fuel supply tank of a highway vehicle;
- 73 4. Imported by a reseller or bulk user, into this Commonwealth;
- 74 5. Acquired tax free by a reseller, bulk user, or user in this Commonwealth, for resale or use for the  
75 propulsion of a highway vehicle; or
- 76 6. Purchased by any person, firm or corporation, except a licensed supplier, and subsequently  
77 transported and delivered by such person, firm, or corporation to another state, district, or country for  
78 sale or use without the Commonwealth.

79 B. A tax at the rate of five cents per gallon is hereby imposed upon all aviation special fuel:

- 80 1. Sold or delivered by any supplier, other than an aviation consumer, to any licensed reseller or  
81 bulk user;
- 82 2. Used by a supplier, other than an aviation consumer, in any aircraft owned, leased or operated by  
83 him;
- 84 3. Delivered by a supplier directly into the fuel supply tank of an aircraft, other than an aircraft  
85 owned, leased or operated by a licensed aviation consumer; or
- 86 4. Imported by a reseller or bulk user into, or acquired tax free by a reseller, bulk user or user in this  
87 Commonwealth for resale or use for the propulsion of an aircraft.

88 C. A tax at the rate of five cents per gallon is hereby imposed on aviation special fuel purchased or  
89 acquired for use by an aviation fuel user. A tax at the rate of five cents per gallon is hereby imposed  
90 upon the first 100,000 gallons of aviation special fuel, excluding bonded aviation special fuel, purchased  
91 or acquired for use by any aviation consumer in any fiscal year. A tax at the rate of one-half cent per  
92 gallon is hereby imposed on all aviation special fuel, excluding bonded aviation special fuel, purchased  
93 or acquired for use in excess of 100,000 gallons by an aviation consumer in any fiscal year.

94 Any person who shall, while licensed or unlicensed under this chapter, use, acquire for use, sell or  
95 deliver for use in highway vehicles any aviation special fuel taxable under this article shall be liable for  
96 the tax imposed at the rate of ~~sixteen~~ *twenty-one* cents per gallon under this section, along with any  
97 penalties and interest which may accrue.

98 D. Upon application to and approval by the Commissioner, any producer of synthetic diesel fuel  
99 produced from coal in a county with a population between 19,000 and 51,000 as determined by the  
100 1980 U.S. Census shall be subject to tax as follows:

- 101 1. For the first three years of production, the tax shall be three cents per gallon;
- 102 2. For the fourth year of production, the tax shall be nine cents per gallon;
- 103 3. For the fifth year of production, the tax shall be eleven and one-half cents per gallon;
- 104 4. For the sixth and seventh years of production, the tax shall be thirteen and one-half cents per  
105 gallon;
- 106 5. For the eighth and ninth years of production, the tax shall be fifteen and one-half cents per gallon;  
107 and
- 108 6. Beginning in the tenth year of production and thereafter, the tax shall be at the rate prescribed in  
109 subsection A. The total number of gallons of synthetic diesel fuel and synthetic motor fuel subject to tax  
110 in this subsection and subsection C of § 58.1-2105 shall not exceed twenty-five million gallons per fiscal  
111 year.

112 E. Beginning January 1, 1994, and until July 1, 1998, there is hereby levied a tax at the rate  
113 equivalent to ten cents per gallon upon all clean special fuels:

- 114 1. Sold or delivered by any supplier to any licensed reseller or bulk user;
- 115 2. Used by any supplier in any highway vehicle owned, leased, or operated by him;
- 116 3. Delivered by a supplier directly into the fuel supply tank of a highway vehicle; or
- 117 4. Acquired tax free by a reseller, bulk user, or user in this Commonwealth, for resale or use for the  
118 propulsion of a highway vehicle.

119 F. On and after July 1, 1998, there shall be levied a tax upon all clean special fuels at the same rate  
120 as the tax imposed upon diesel fuel as provided in subsection A of this section.

121 G. Any supplier who collects the tax on diesel fuel, aviation special fuel, and clean special fuels

shall be liable for the payment thereof to the Department of Motor Vehicles.

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

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

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

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

The total refunds allowed to any one applicant in all cases pursuant to clause (ii) of subdivision 1 of this section with respect to fuel which is subject to the tax imposed by this chapter shall not exceed the sum of \$2,000 in any fiscal year.

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

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

§ 58.1-2124. Refund for agricultural use.

Any person who at any one time buys fuel in quantities of five gallons or more on which the tax imposed by this chapter has been paid for the purpose of operating or propelling unlicensed highway vehicles and other unlicensed equipment used for agricultural purposes is entitled to a refund of the tax paid by such person. The amount of the refund shall be paid by the Commissioner as follows:

1. ~~Fifteen~~Twenty and one-half cents of the tax paid on each gallon of fuel so used shall be refunded to the claimant.

2. One-half cent of the tax paid on each gallon of fuel so used shall be paid by the Commissioner into the state treasury to the credit of the Virginia Agricultural Foundation Fund as provided by § 58.1-2146.

§ 58.1-2146. Disposition of tax revenues.

A. Unless otherwise provided in this section all taxes and fees collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury. Except as provided in § 33.1-23.03:1, no portion of the revenue derived from taxes collected pursuant to §§ 58.1-2701, 58.1-2105 and 58.1-2116, and remaining after authorized refunds for nonhighway use of fuels, shall be used for any purpose other than the construction, reconstruction or maintenance of the roads and projects comprising the State Highway System, the Interstate System and the secondary system of state highways and expenditures directly and necessarily required for such purposes, including the retirement of revenue bonds.

Revenues collected under this chapter may be also used for (i) making a contribution towards the construction, reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law; and (ii) expenditures for the operation and maintenance of the Department of Transportation and the Department of Motor Vehicles as may be provided by law.

The Governor is hereby authorized to transfer out of such fund an amount necessary for the purpose of inspection of gasoline and motor grease measuring and distributing equipment, and for inspection and

183 analysis of gasoline for purity.

184 B. The tax collected on each gallon of aviation fuel sold and delivered or used in the  
185 Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of the  
186 special fund shall be disbursed upon order of the Department of Aviation, on warrants of the  
187 Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to  
188 aviation, for the construction, maintenance and improvement of airports and landing fields to which the  
189 public now has or which it is proposed shall have access, and for the promotion of aviation in the  
190 interest of operators and the public generally.

191 C. One-half cent of the tax collected on each gallon of fuel on which the refund has been paid at the  
192 rate of ~~seventeen~~ *twenty-two* cents per gallon, or in the case of diesel fuel ~~fifteen~~ *twenty* and one-half  
193 cents per gallon, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes  
194 shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation  
195 Fund, to be disbursed to make certain refunds and defray the costs of the research and educational  
196 phases of the agricultural program, including supplemental salary payments to certain employees at the  
197 Virginia Polytechnic Institute and State University, the State Department of Agriculture and Consumer  
198 Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the  
199 Virginia Agricultural Council.

200 D. One and one-half cents of the tax collected on each gallon of motor fuel used to propel a  
201 commercial boat or ship upon which a refund has been paid shall be paid to the credit of the game  
202 protection fund of the state treasury to be made available to the Board of Game and Inland Fisheries  
203 until expended for the purposes provided generally in subsection C of § 29.1-701, including acquisition,  
204 construction, improvement and maintenance of public boating access areas on the public waters of the  
205 Commonwealth and for other activities and purposes of direct benefit and interest to the boating public  
206 and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial  
207 fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be  
208 used for the construction, repair, improvement and maintenance of the public docks of the  
209 Commonwealth used by said commercial boats. Any expenditures for the acquisition, construction,  
210 improvement and maintenance of the public docks shall be made according to a plan developed by the  
211 Virginia Marine Resources Commission.

212 From the tax collected pursuant to the provisions of this chapter from the sales of motor fuels used  
213 for the propelling of boats or ships, after deduction for lawful refunds, there shall be paid into the state  
214 treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board,  
215 the State Water Control Board, and the Commonwealth Transportation Board for the purpose of (i)  
216 improving the public docks as specified in this section, (ii) improving commercial and sports fisheries in  
217 Virginia's tidal waters, (iii) environmental improvements including, without limitation, fisheries  
218 management and habitat enhancement in the Chesapeake and its tributaries, and (iv) ~~for~~ the purposes set  
219 forth in § 33.1-223 a sum as established by the General Assembly.

220 E. Notwithstanding other provisions of this section, there shall be transferred from moneys collected  
221 pursuant to this section to a special fund in the state treasury, to be used to meet the necessary expenses  
222 of the Department of Motor Vehicles, an amount equal to one percent of a sum to be calculated as  
223 follows: the tax revenues collected pursuant to this chapter, at the tax rates in effect on December 31,  
224 1986, less refunds authorized by this title and less taxes collected for aviation fuels.

225 § 58.1-2701. Amount of tax.

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

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

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

234 § 58.1-2706. Credit for payment of motor fuel, diesel fuel or liquefied gases tax.

235 A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax equivalent to  
236 ~~sixteen~~ *twenty-one* cents per gallon on all motor fuel or diesel fuel or ten cents per gallon on liquefied  
237 gases purchased by such carrier within the Commonwealth for use in its operations either within or  
238 without the Commonwealth and upon which motor fuel, diesel fuel or liquefied gases tax imposed by  
239 the laws of the Commonwealth has been paid by such carrier. Evidence of the payment of such tax in  
240 such form as may be required by, or is satisfactory to, the Department shall be furnished by each carrier  
241 claiming the credit herein allowed.

242 B. When the amount of the credit to which any motor carrier is entitled for any quarter exceeds the  
243 amount of the tax for which such carrier is liable for the same quarter, the excess may: (i) be allowed as  
244 a credit on the tax for which such carrier would be otherwise liable for any of the eight succeeding

245 quarters or (ii) be refunded, upon application, duly verified and presented and supported by such  
246 evidence as may be satisfactory to the Department.

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

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

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

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