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HOUSE BILL NO. 1275
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by Delegate Parrish
 on February 17, 2000)

(Patron Prior to Substitute—Delegate Rust)

A BILL to amend and reenact §§ 46.2-749.3, 58.1-609.1, 58.1-2701, 58.1-2702, and 62.1-44.34:13 of the Code of Virginia; and to amend the Code of Virginia by adding sections numbered 33.1-221.1:6 and 46.2-819.2, and by adding in Title 58.1 a chapter numbered 22, consisting of articles numbered 1 through 10, containing sections numbered 58.1-2200 through 58.1-2290; and to repeal Chapter 21 (§§ 58.1-2100 through 58.1-2147) of Title 58.1 of the Code of Virginia, relating to fuels taxes; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-749.3, 58.1-609.1, 58.1-2701, 58.1-2702, and 62.1-44.34:13 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 33.1-221.1:6 and 46.2-819.2, and by adding in Title 58.1 a chapter numbered 22, consisting of articles numbered 1 through 10, containing sections numbered 58.1-2200 through 58.1-2290, as follows:

§ 33.1-221.1:6. *Interstate 66 Economic Development Program Fund.*

A. There is hereby created in the Department of Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Interstate 66 Economic Development Program Fund (the "I-66 Fund"), consisting of such funds as may be appropriated by the General Assembly from time to time, and any other funds from private or local sources. Any moneys remaining in the I-66 Fund at the end of a biennium shall not revert to the general fund, but shall remain in the I-66 Fund. The amounts in the I-66 Fund shall be used to pay the cost of the projects which comprise the Interstate 66 Economic Development Program as defined in § 33.1-221.1:4.

B. In the event the Commonwealth Transportation Board determines from time to time that funds in the I-66 Fund are in excess of those required to provide for payment of obligations, then such excess funds, subject to their appropriation by the General Assembly, may be transferred to the Transportation Trust Fund for allocation purposes pursuant to § 33.1-23.1 A.

§ 46.2-749.3. *Special license plates for clean special fuel vehicles.*

~~The owner of any motor vehicle, except a motorcycle, that may utilize clean special fuel may purchase special license plates indicating the motor vehicle utilizes clean special fuels. Upon receipt of an application, the Commissioner shall issue special license plates to the owners of such vehicles. Notwithstanding § 46.2-725, for license plates issued under this section prior to July 1, 1998, the Commissioner shall charge only the prescribed cost of state license plates, and no additional fee shall be charged.~~

For those motor vehicles required by law to display official government-use license plates, the Commissioner shall provide by regulation for the issuance, display, and fee for issuance of an alternative device indicating that the vehicle displaying the device is a clean special fuel vehicle. For the purposes of § 33.1-46.2, vehicles displaying such a device as provided in such regulation shall be treated as vehicles displaying special license plates issued under this section.

As used in this section, "clean special fuel" means any product or energy source used to propel a highway vehicle, the use of which, compared to conventional gasoline or reformulated gasoline, results in lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide or particulates or any combination thereof. The term includes compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, hythane (a combination of compressed natural gas and hydrogen), and electricity.

46.2-819.2. Driving a motor vehicle from establishment where motor fuel offered for sale; suspension of license; penalty.

A. No person shall drive a motor vehicle off the premises of an establishment at which motor fuel offered for retail sale was dispensed into the fuel tank of such motor vehicle unless payment for such fuel has been made.

B. Any person who violates this section shall be liable for a civil penalty not to exceed \$100.00.

C. The driver's license of any person found to have violated this section (i) shall be suspended, for the first offense, for a period of up to 30 days; and (ii) shall be suspended for for a period of 60 days for the second and subsequent offenses.

§ 58.1-609.1. *Governmental and commodities exemptions.*

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

- 60 1. Fuels which are subject to the tax imposed by Chapter 2122 (§ ~~58.1-2100~~ 58.1-2200 et seq.) of
- 61 this title. Persons who are refunded any such fuel tax shall, however, be subject to the tax imposed by
- 62 this chapter, unless such taxes would be specifically exempted pursuant to any provision of this section.
- 63 2. Motor vehicles, trailers, semitrailers, mobile homes and travel trailers.
- 64 3. Gas, electricity, or water when delivered to consumers through mains, lines, or pipes.
- 65 4. Tangible personal property for use or consumption by the Commonwealth, any political
- 66 subdivision of the Commonwealth, or the United States. This exclusion shall not apply to sales and
- 67 leases to privately owned financial and other privately owned corporations chartered by the United
- 68 States. Further, this exemption shall not apply to tangible personal property which is acquired by the
- 69 Commonwealth or any of its political subdivisions and then transferred to private businesses for their
- 70 use in a facility or real property improvement to be used by a private entity or for nongovernmental
- 71 purposes other than tangible personal property acquired by the Advanced Shipbuilding and Carrier
- 72 Integration Center and transferred to a Qualified Shipbuilder as defined in the third enactment of
- 73 Chapter 790 of the 1998 Acts of the General Assembly.
- 74 5. Aircraft subject to tax under Chapter 15 (§ 58.1-1500 et seq.) of this title.
- 75 6. Motor fuels, ~~diesel fuel,~~ and ~~clean special alternative~~ fuels for use in a ~~boat or ship,~~ *commercial*
- 76 *watercraft* upon which a fuel tax is refunded pursuant to § ~~58.1-2113~~ or § ~~58.1-2122~~58.1-2259.
- 77 7. Sales by a government agency of the official flags of the United States, the Commonwealth of
- 78 Virginia, or of any county, city or town.
- 79 8. Materials furnished by the State Board of Elections pursuant to §§ 24.2-404 through 24.2-407.
- 80 9. Watercraft as defined in § 58.1-1401.
- 81 10. Tangible personal property used in and about a marine terminal under the supervision of the
- 82 Virginia Port Authority for handling cargo, merchandise, freight and equipment. This exemption shall
- 83 apply to agents, lessees, sublessees or users of tangible personal property owned by or leased to the
- 84 Virginia Port Authority and to property acquired or used by the Authority or by a nonstock, nonprofit
- 85 corporation that operates a marine terminal or terminals on behalf of the Authority.
- 86 11. Sales by prisoners confined in state correctional facilities of artistic products personally made by
- 87 the prisoners as authorized by § 53.1-46.
- 88 12. Tangible personal property for use or consumption by the Virginia Department for the Visually
- 89 Handicapped or any nominee, as defined in § 63.1-142, of such Department.
- 90 13. From July 1, 1995, through June 30, 2000, tangible personal property for use or consumption by
- 91 any community diversion program or successor program as established in accordance with the provisions
- 92 of Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1.
- 93 14. Tangible personal property sold to residents and patients of the Virginia Veterans Care Center at
- 94 a canteen operated by the Virginia Veterans Care Center Board of Trustees established pursuant to
- 95 § 2.1-744.1.
- 96 15. Tangible personal property for use or consumption by any nonprofit organization whose members
- 97 include the Commonwealth and other states and which is organized for the purpose of fostering
- 98 interstate cooperation and excellence in government.

99 *CHAPTER 22.*

100 *VIRGINIA FUELS TAX ACT.*

101 *Article 1.*

102 *General Provisions.*

103 § 58.1-2200. *Title; nature of tax.*

104 *A. This chapter shall be known and may be cited as the "Virginia Fuels Tax Act."*

105 *B. All taxes levied under this chapter are imposed upon the ultimate consumer but are precollected*
 106 *as prescribed in this chapter. The levies and assessments imposed on licensees as provided in this*
 107 *chapter are imposed on them as agents of the Commonwealth for the precollection of the tax. The taxes*
 108 *levied under this chapter shall be collected and paid at those times, in the manner, and by those*
 109 *persons specified in this chapter.*

110 § 58.1-2201. *Definitions.*

111 *As used in this chapter, unless the context requires otherwise:*

112 *"Alternative fuel" means a combustible gas, liquid or other energy source that can be used to*
 113 *generate power to operate a highway vehicle and that is not a motor fuel.*

114 *"Assessment" means a written determination by the Department of the amount of taxes owed by a*
 115 *taxpayer. Assessments made by the Department shall be deemed to be made when a written notice of*
 116 *assessment is delivered to the taxpayer by the Department or is mailed by certified or registered mail to*
 117 *the taxpayer at the last known address appearing in the Commissioner's files.*

118 *"Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation jet fuel in*
 119 *any fiscal year and is licensed pursuant to Article 2 (§ 58.1-2204 et seq.) of this chapter.*

120 *"Aviation fuel" means aviation gasoline or aviation jet fuel.*

121 *"Aviation gasoline" means fuel designed for use in the operation of aircraft other than jet aircraft,*

122 and sold or used for that purpose.

123 "Aviation jet fuel" means fuel designed for use in the operation of jet or turbo-prop aircraft, and
124 sold or used for that purpose.

125 "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a
126 de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used
127 as a fuel in a highway vehicle.

128 "Blender" means a person who produces blended fuel outside the terminal transfer system.

129 "Bonded aviation jet fuel" means aviation jet fuel held in bonded storage under United States
130 Customs Law and delivered into a fuel supply tank of aircraft operated by certificated air carriers on
131 international flights.

132 "Bonded importer" means a person, other than a supplier, who imports, by transport truck or
133 another means of transfer outside the terminal transfer system, motor fuel removed from a terminal
134 located in another state in which (i) the state from which the fuel is imported does not require the seller
135 of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the
136 destination state; (ii) the supplier of the fuel is not an elective supplier; or (iii) the supplier of the fuel
137 is not a permissive supplier.

138 "Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of
139 the stored fuel to operate a highway vehicle, watercraft, or aircraft.

140 "Bulk user of alternative fuel" means a person who maintains storage facilities for alternative fuel
141 and uses part or all of the stored fuel to operate a highway vehicle.

142 "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from
143 which motor fuel may be removed at a rack.

144 "Commercial watercraft" means a watercraft employed in the business of commercial fishing,
145 transporting persons or property for compensation or hire, or any other trade or business unless the
146 watercraft is used in an activity of a type generally considered entertainment, amusement, or recreation.

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

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

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

154 "Designated inspection site" means any state highway inspection station, weigh station, agricultural
155 inspection station, mobile station, or other location designated by the Commissioner to be used as a fuel
156 inspection site.

157 "Destination state" means the state, territory, or foreign country to which motor fuel is directed for
158 delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the
159 purpose of resale or use. The term shall not include a tribal reservation of any recognized American
160 Indian tribe.

161 "Diesel fuel" means any liquid that is suitable for use as a fuel in a diesel-powered highway vehicle
162 or watercraft. The term shall include #1 fuel oil, #2 fuel oil, and kerosene, but shall not include
163 gasoline or aviation jet fuel.

164 "Distributor" means a person who acquires motor fuel from a supplier or from another distributor
165 for subsequent sale.

166 "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C.
167 § 4082.

168 "Elective supplier" means a supplier who (i) is required to be licensed in the Commonwealth and (ii)
169 elects to collect the tax due the Commonwealth on motor fuel that is removed at a terminal located in
170 another state and has Virginia as its destination state.

171 "End seller" means the person who sells fuel to the ultimate user of the fuel.

172 "Export" means to obtain motor fuel in Virginia for sale or other distribution in another state,
173 territory, or foreign country. Motor fuel delivered out-of-state by or for the seller constitutes an export
174 by the seller, and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the
175 purchaser.

176 "Fuel" includes motor fuel and alternative fuel.

177 "Fuel alcohol" means methanol or fuel grade ethanol.

178 "Fuel alcohol provider" means a person who (i) produces fuel alcohol or (ii) imports fuel alcohol
179 outside the terminal transfer system by means of a marine vessel, a transport truck, or a railroad tank
180 car.

181 "Gasohol" means a blended fuel composed of gasoline and fuel grade ethanol.

182 "Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and

183 are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have
184 an American Society for Testing Materials octane number of less than seventy-five as determined by the
185 motor method; (ii) a petroleum product component of gasoline, such as naphtha, reformat, or toluene;
186 (iii) gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an
187 aircraft engine.

188 "Governmental entity" means (i) the Commonwealth or any political subdivision thereof or (ii) the
189 United States or its departments, agencies, and instrumentalities.

190 "Gross gallons" means an amount of motor fuel measured in gallons, exclusive of any temperature,
191 pressure, or other adjustments.

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

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

197 "Highway vehicle" means a self-propelled vehicle designed for use on a highway.

198 "Import" means to bring motor fuel into Virginia by any means of conveyance other than in the fuel
199 supply tank of a highway vehicle. Motor fuel delivered into Virginia from out-of-state by or for the
200 seller constitutes an import by the seller, and motor fuel delivered into Virginia from out-of-state by or
201 for the purchaser constitutes an import by the purchaser.

202 "In-state-only supplier" means (i) a supplier who is required to have a license and who elects not to
203 collect the tax due the Commonwealth on motor fuel that is removed by that supplier at a terminal
204 located in another state and has Virginia as its destination state or (ii) a supplier who does business
205 only in Virginia.

206 "Licensee" means any person licensed by the Commissioner pursuant to Article 2 (§ 58.1-2204 et
207 seq.) of this chapter or § 58.1-2244.

208 "Liquid" means any substance that is liquid above its freezing point.

209 "Motor fuel" means gasoline, diesel fuel, blended fuel, and aviation fuel.

210 "Motor fuel transporter" means a person who transports motor fuel outside the terminal transfer
211 system by means of a transport truck, a railroad tank car, or a marine vessel.

212 "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature
213 of sixty degrees Fahrenheit and a pressure of 14.7 pounds per square inch.

214 "Occasional importer" means any person who (i) imports motor fuel by any means outside the
215 terminal transfer system and (ii) is not required to be licensed as a bonded importer.

216 "Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a
217 supplier's license under this chapter.

218 "Person" means any individual; firm; cooperative; association; corporation; limited liability
219 corporation; trust; business trust; syndicate; partnership; limited liability partnership; joint venture;
220 receiver; trustee in bankruptcy; club, society or other group or combination acting as a unit; or public
221 body, including but not limited to the Commonwealth, any other state, and any agency, department,
222 institution, political subdivision or instrumentality of the Commonwealth or any other state.

223 "Position holder" means a person who holds an inventory position of motor fuel in a terminal, as
224 reflected on the records of the terminal operator. A person holds an "inventory position of motor fuel"
225 when he has a contract with the terminal operator for the use of storage facilities and terminaling
226 services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

227 "Principal" means (i) if a partnership, all its partners; (ii) if a corporation, all its officers, directors,
228 and controlling direct or indirect owners; (iii) if a limited liability company, all its members; and (iv) or
229 an individual.

230 "Provider of alternative fuel" means a person who (i) acquires alternative fuel for sale or delivery to
231 a bulk user or a retailer; (ii) maintains storage facilities for alternative fuel, part or all of which the
232 person sells to someone other than a bulk user or a retailer to operate a highway vehicle; (iii) sells
233 alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a
234 fuel supply line from the cargo tank of the vehicle to the engine of the vehicle; or (iv) imports
235 alternative fuel into Virginia, by a means other than the usual tank or receptacle connected with the
236 engine of a highway vehicle, for sale or use by that person to operate a highway vehicle.

237 "Rack" means a facility that contains a mechanism for delivering motor fuel from a refinery,
238 terminal, or bulk plant into a transport truck, railroad tank car, or other means of transfer that is
239 outside the terminal transfer system.

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

241 "Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum
242 products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel
243 or at a rack.

244 "Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical

245 transfer to a transport truck or other means of conveyance outside the terminal transfer system is
246 complete upon delivery into the means of conveyance.

247 "Retailer" means a person who (i) maintains storage facilities for motor fuel and (ii) sells the fuel at
248 retail or dispenses the fuel at a retail location.

249 "Retailer of alternative fuel" means a person who (i) maintains storage facilities for alternative fuel
250 and (ii) sells the fuel at retail or dispenses the fuel at a retail location.

251 "Supplier" means (i) a position holder, (ii) a person who receives motor fuel pursuant to a two-party
252 exchange, or (iii) a fuel alcohol provider. A licensed supplier includes a licensed elective supplier and
253 licensed permissive supplier.

254 "System transfer" means a transfer (i) of motor fuel within the terminal transfer system or (ii) of fuel
255 grade ethanol by transport truck or railroad tank car.

256 "Tank wagon" means a straight truck or straight truck/trailer combination designed or used to carry
257 fuel and having a capacity of less than 6,000 gallons.

258 "Terminal" means a motor fuel storage and distribution facility (i) to which a terminal control
259 number has been assigned by the Internal Revenue Service, (ii) to which motor fuel is supplied by
260 pipeline or marine vessel, and (iii) from which motor fuel may be removed at a rack.

261 "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

262 "Terminal transfer system" means a motor fuel distribution system consisting of refineries, pipelines,
263 marine vessels, and terminals, and which is a "bulk transfer/terminal system" under 26 C.F.R. Part
264 48.4081-1.

265 "Transmix" means (i) the buffer or interface between two different products in a pipeline shipment or
266 (ii) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

267 "Transport truck" means a tractor truck/semitrailer combination designed or used to transport
268 cargoes of motor fuel over a highway.

269 "Trustee" means a person who (i) is licensed as a supplier, an elective supplier, or a permissive
270 supplier and receives tax payments from and on behalf of a licensed or unlicensed distributor, or other
271 person pursuant to § 58.1-2231 or (ii) is licensed as a provider of alternative fuel and receives tax
272 payments from and on behalf of a bulk user of alternative fuel, retailer of alternative fuel or other
273 person pursuant to § 58.1-2252.

274 "Two-party exchange" means a transaction in which fuel is transferred from one licensed supplier to
275 another licensed supplier pursuant to an exchange agreement, which transaction (i) includes a transfer
276 from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on
277 the records of the terminal operator and (ii) is completed prior to removal of the product from the
278 terminal by the receiving exchange partner.

279 "Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental
280 Protection Agency or Internal Revenue Service fuel-dyeing requirements.

281 "Use" means the actual consumption or receipt of motor fuel by any person into a highway vehicle,
282 aircraft, or watercraft.

283 "Watercraft" means any vehicle used on waterways.

284 § 58.1-2202. Regulations; forms.

285 The Commissioner may promulgate regulations and shall prescribe forms as shall be necessary to
286 effectuate and enforce this chapter.

287 § 58.1-2203. Exchange of information; penalties.

288 A. The Commissioner may, upon request from the officials entrusted with enforcing the fuels tax laws
289 of any other state, forward to such officials any information that the Commissioner may have relative to
290 the production, manufacture, refining, compounding, receipt, sale, use, transportation, or shipment by
291 any person of such fuel.

292 B. The Commissioner may enter into written agreements with duly constituted tax officials of other
293 states and of the United States for the inspection of tax returns, the making of audits, and the exchange
294 of information relating to taxes administered by the Department pursuant to this chapter.

295 C. The Commissioner may divulge tax information to the Tax Commissioner, any commissioner of the
296 revenue, director of finance or other authorized collector of county, city, or town taxes who, for the
297 performance of his official duties, requests the same in writing setting forth the reasons for such
298 request.

299 D. Any person to whom tax information is divulged pursuant to this section shall be subject to the
300 prohibitions and penalties prescribed in § 58.1-3 as though that person were a tax official as defined in
301 that section.

302 Article 2.

303 Motor Fuel Licensing.

304 § 58.1-2204. Persons required to be licensed.

305 A. A person shall obtain a license issued by the Commissioner before conducting the activities of:

306 1. A refiner, who shall be licensed as a supplier;
 307 2. A supplier;
 308 3. A terminal operator;
 309 4. An importer;
 310 5. An exporter;
 311 6. A blender;
 312 7. A motor fuel transporter;
 313 8. A bulk user of undyed diesel fuel;
 314 9. A retailer of undyed diesel fuel;
 315 10. An aviation consumer;
 316 11. A bonded importer; or
 317 12. An elective supplier.
 318 B. A person who is engaged in more than one activity for which a license is required shall have a
 319 separate license for each activity, except as provided in subsection C.
 320 C. 1. A person who is licensed as a supplier shall not be required to obtain a separate license for
 321 any other activity for which a license is required and shall be considered to have a license as a
 322 distributor.
 323 2. A person who is licensed as an occasional importer shall not be required to obtain a license as a
 324 distributor.
 325 3. A person who is licensed as a distributor shall not be required to obtain a separate license as an
 326 importer if the distributor acquires fuel for import only from an elective supplier or permissive supplier.
 327 Such licensed distributor shall not be required to obtain a separate license as an exporter.
 328 4. A person who is licensed as a distributor or a blender shall not be required to obtain a separate
 329 license as a motor fuel transporter if he does not transport motor fuel for others for hire.
 330 § 58.1-2205. Types of importers; qualification for license as an importer.
 331 A. An applicant for a license as an importer shall indicate whether he is applying for a license as a
 332 bonded importer or an occasional importer.
 333 B. A person shall not be licensed as more than one type of importer. A bulk user who imports motor
 334 fuel from a terminal of a supplier who is not an elective or a permissive supplier shall be licensed as a
 335 bonded importer. A bulk user who imports motor fuel from a bulk plant and is not required to be
 336 licensed as a bonded importer shall be licensed as an occasional importer. A bulk user who imports
 337 motor fuel only from a terminal of an elective or a permissive supplier shall not be required to be
 338 licensed as an importer.
 339 § 58.1-2206. Persons who may obtain a license.
 340 A person who conducts the activities of a distributor or a permissive supplier may obtain a license
 341 issued by the Commissioner for that activity.
 342 § 58.1-2207. Restrictions on qualification for license as a distributor.
 343 A bulk user of motor fuel shall not be licensed as a distributor.
 344 § 58.1-2208. License application procedure.
 345 A. To obtain a license under this article, an applicant shall file an application with the
 346 Commissioner on a form provided by the Commissioner. An application shall include the applicant's
 347 name, address, federal employer identification number, and any other information required by the
 348 Commissioner.
 349 B. An applicant for a license as a supplier, terminal operator, importer, blender, bulk user of undyed
 350 diesel fuel, retailer of undyed diesel fuel, distributor, or aviation consumer shall satisfy the following
 351 requirements:
 352 1. If the applicant is a corporation, the applicant shall either be incorporated in the Commonwealth
 353 or authorized to transact business in the Commonwealth;
 354 2. If the applicant is a limited liability company, the applicant shall be organized in the
 355 Commonwealth or authorized to transact business in the Commonwealth;
 356 3. If the applicant is a limited liability partnership, the applicant shall either be formed in the
 357 Commonwealth or authorized to transact business in the Commonwealth; or
 358 4. If the applicant is an individual or a general partnership, the applicant shall designate an agent
 359 for service of process and provide the agent's name and address.
 360 C. An applicant for a license as a supplier, terminal operator, blender, or permissive supplier shall
 361 have a federal certificate of registry issued under 26 U.S.C. § 4101 that authorizes the applicant to
 362 enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An
 363 applicant who is required to have a federal certificate of registry shall include the registration number
 364 of the certificate on the application for a license under this section. An applicant for a license as an
 365 importer, an exporter, or a distributor who has a federal certificate of registry issued under 26 U.S.C.
 366 § 4101 shall include the registration number of the certificate on the application for a license under this
 367 section.

368 D. An applicant for a license as an importer or distributor shall list on the application each state
 369 from which the applicant intends to import motor fuel and, if required by a state listed, shall be licensed
 370 or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be
 371 licensed or registered, the applicant shall provide the applicant's license or registration number of that
 372 state. A licensee who intends to import motor fuel from a state not listed on his application for an
 373 importer's license or a distributor's license shall provide the Commissioner written notice of such action
 374 before importing motor fuel from that state. The notice shall include the information that is required on
 375 the license application.

376 E. An applicant for a license as an exporter shall designate an agent located in Virginia for service
 377 of process and provide the agent's name and address. An applicant for a license as an exporter or
 378 distributor shall list on the application each state to which the applicant intends to export motor fuel
 379 received in Virginia by means of a transfer that is outside the terminal transfer system and, if required
 380 by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed
 381 requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or
 382 registration number of that state. A licensee who intends to export motor fuel to a state not listed on his
 383 application for an exporter's license or a distributor's license shall provide the Commissioner written
 384 notice of such action before exporting motor fuel to that state. The notice shall include the information
 385 required on the license application.

386 § 58.1-2209. Supplier election to collect tax on out-of-state removals.

387 A. An applicant for a license as a supplier may elect on the application to collect the tax due the
 388 Commonwealth on motor fuel that is removed at a terminal located in another state and has Virginia as
 389 its destination state. The Commissioner shall provide for this election on the application form. A
 390 supplier who makes the election allowed by this section shall be an elective supplier. A supplier who
 391 does not make the election allowed by this section shall be an in-state-only supplier. A supplier who
 392 does not make the election on the application for a supplier's license may make the election later by
 393 completing an election form provided by the Commissioner. A supplier who has not made the election
 394 shall not act as an elective supplier for purposes of this chapter.

395 B. A supplier who makes the election allowed by this section shall comply with all of the following
 396 with respect to motor fuel that is removed at a terminal located in another state and has Virginia as its
 397 destination state:

- 398 1. Collect the tax due the Commonwealth on the fuel;
- 399 2. Waive any defense that the Commonwealth lacks jurisdiction to require the supplier to collect the
 400 tax due the Commonwealth on the fuel under this chapter;
- 401 3. Report and pay the tax due on the fuel in the same manner as if the removal had occurred at a
 402 terminal located in Virginia;
- 403 4. Keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal
 404 had occurred at a terminal located in Virginia; and
- 405 5. Report sales by the supplier to a person who is not licensed in the state where the removal
 406 occurred if the destination state is Virginia.

407 C. A supplier who makes the election allowed by this section (i) acknowledges that the
 408 Commonwealth imposes the requirements listed in subsection B of this section on the supplier under its
 409 general police power and (ii) submits to the jurisdiction of the Commonwealth only for purposes related
 410 to the administration of this chapter.

411 § 58.1-2210. Permissive supplier election to collect tax on out-of-state removals.

412 A. An out-of-state supplier who is not required to be licensed under this chapter may elect to obtain
 413 a license and thereby become a permissive supplier. An out-of-state supplier who does not make this
 414 election shall not act as a permissive supplier for motor fuel that is removed at a terminal in another
 415 state and has Virginia as its destination state.

416 B. An out-of-state supplier who elects to be licensed as a permissive supplier shall comply with (i)
 417 the same requirements imposed on a supplier and (ii) all of the following with respect to motor fuel that
 418 is removed by the permissive supplier at a terminal located in another state and has Virginia as its
 419 destination state:

- 420 1. Collect the tax due the Commonwealth on the fuel;
- 421 2. Waive any defense that the Commonwealth lacks jurisdiction to require the supplier to collect the
 422 tax due the Commonwealth on the motor fuel under this chapter;
- 423 3. Report and pay the tax due on the fuel in the same manner as if the removal had occurred at a
 424 terminal located in Virginia;
- 425 4. Keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal
 426 had occurred at a terminal located in Virginia; and
- 427 5. Report sales by the supplier to a person who is not licensed in the state where the removal
 428 occurred if the destination state is Virginia.

429 C. An out-of-state supplier who makes the election allowed by this section (i) acknowledges that the
430 Commonwealth imposes the requirements listed in subsection B on the supplier under its general police
431 power and (ii) submits to the jurisdiction of the Commonwealth only for purposes related to the
432 administration of this chapter.

433 § 58.1-2211. Bond, certificate of deposit, or letter of credit requirements.

434 A. An applicant for a license as a terminal operator, supplier, importer, blender, permissive supplier,
435 distributor, or aviation consumer shall file with the Commissioner a bond, certificate of deposit, or
436 irrevocable letter of credit. The bond, certificate of deposit, or irrevocable letter of credit shall be
437 conditioned upon compliance with the requirements of this chapter, be payable to the Commonwealth,
438 and be in the form required by the Commissioner. The amount of the bond, certificate of deposit, or
439 irrevocable letter of credit shall be as follows:

440 1. For an applicant for a license as a (i) terminal operator, (ii) supplier who is a position holder or
441 a person who receives motor fuel pursuant to a two-party exchange, (iii) bonded importer, or (iv)
442 permissive supplier, the amount shall be \$2,000,000; and

443 2. For an applicant for a license as (i) a supplier who is a fuel alcohol provider but is neither a
444 position holder nor a person who receives motor fuel pursuant to a two-party exchange; (ii) an
445 occasional importer; (iii) a distributor; (iv) a blender; or (v) an aviation consumer, the amount shall be
446 three times the applicant's average expected monthly tax liability under this chapter, as determined by
447 the Commissioner. The amount shall not be less than \$2,000 nor more than \$300,000.

448 B. An applicant for a license both as a distributor and as a bonded importer shall file only the bond,
449 certificate of deposit, or irrevocable letter of credit required of a bonded importer. An applicant for two
450 or more of the licenses listed in subdivision A 2 may file one bond, certificate of deposit, or irrevocable
451 letter of credit that covers the combined liabilities of the applicant under all the activities, in which
452 event the amount of the bond, certificate of deposit, or irrevocable letter of credit for the combined
453 activities shall not exceed \$300,000.

454 C. When notified to do so by the Commissioner, a person who has filed a bond, certificate of
455 deposit, or an irrevocable letter of credit and who holds a license listed in subdivision A 2 shall file an
456 additional bond, certificate of deposit, or irrevocable letter of credit in the amount required by the
457 Commissioner. The person shall file the additional bond, certificate of deposit, or irrevocable letter of
458 credit within thirty days after receiving the notice from the Commissioner. However, the amount of the
459 initial bond, certificate of deposit, or irrevocable letter of credit and any additional bond, certificate of
460 deposit, or irrevocable letter of credit filed by the licensee shall not exceed \$300,000.

461 Any licensee who disagrees with the Commissioner's decision requiring new or additional security
462 shall be entitled to a hearing. Such matter shall, within thirty days, be scheduled for a prompt hearing
463 before the Commissioner after written request for such hearing is received by the Commissioner.

464 § 58.1-2212. Grounds for denial of license.

465 The Commissioner may refuse to issue a license under this article to an applicant if (i) the applicant
466 or (ii) any principal of the applicant that is a business entity has:

467 1. Had a license or registration issued under prior law or this chapter canceled by the
468 Commissioner for cause;

469 2. Had a motor fuel license or registration issued by another state canceled for cause;

470 3. Had a federal Certificate of Registry issued under § 4101 of the Internal Revenue Code, or a
471 similar federal authorization, revoked;

472 4. Been convicted of any offense involving fraud or misrepresentation; or

473 5. Been convicted of any other offense that indicates that the applicant may not comply with this
474 chapter if issued a license.

475 § 58.1-2213. Issuance of license.

476 Upon approval of an application, the Commissioner shall issue to the applicant a license and a
477 duplicate copy of the license for each place of business of the applicant. A supplier's license shall
478 indicate the category of the supplier. A licensee shall display the license issued under this chapter in a
479 conspicuous place at each place of business of the licensee. A license shall not be transferable and shall
480 remain in effect until surrendered or canceled.

481 § 58.1-2214. Notice of discontinuance, sale or transfer of business.

482 A. A licensee who discontinues in the Commonwealth the business for which the license was issued
483 shall notify the Commissioner in writing of such discontinuance and shall surrender the license to the
484 Commissioner. The notice shall state the effective date of the discontinuance and, if the licensee has
485 transferred the business or otherwise relinquished control to another person by sale or otherwise, the
486 date of the sale or transfer and the name and address of the person to whom the business is transferred
487 or relinquished. The notice shall also include any other information required by the Commissioner.

488 B. If the licensee is a supplier, all taxes for which the supplier is liable under this chapter but are
489 not yet due shall be due on the date of the discontinuance. If the supplier has transferred the business
490 to another person and does not give the notice required by this section, the person to whom the

491 business was transferred shall be liable for the amount of any tax owed by the supplier to the
 492 Commonwealth on the date the business was transferred. The liability of the person to whom the
 493 business was transferred shall not exceed the value of the property acquired from the supplier.

494 § 58.1-2215. License cancellation.

495 A. The Commissioner may cancel the license of any person licensed under this article, upon written
 496 notice sent by registered mail to the licensee's last known address appearing in the Commissioner's files,
 497 for any of the following reasons:

498 1. Filing by the licensee of a false report of the data or information required by this chapter;

499 2. Failure, refusal, or neglect of the licensee to file a report required by this chapter;

500 3. Failure of the licensee to pay the full amount of the tax due or pay any penalties or interest due
 501 as required by this chapter;

502 4. Failure of the licensee to keep accurate records of the quantities of motor fuel received, produced,
 503 refined, manufactured, compounded, sold, or used in Virginia;

504 5. Failure to file a new or additional bond or irrevocable letter of credit upon request of the
 505 Commissioner pursuant to § 58.1-2211;

506 6. Conviction of the licensee or a principal of the licensee for any act prohibited under this chapter;

507 7. Failure, refusal, or neglect of a licensee to comply with any other provision of this chapter or any
 508 regulation promulgated pursuant to this chapter; or

509 8. A change in the ownership or control of the business.

510 B. Upon cancellation of any license for any cause listed in subsection A, the tax levied under this
 511 chapter shall become due and payable on (i) all untaxed motor fuel held in storage or otherwise in the
 512 possession of the licensee and (ii) all motor fuel sold, delivered, or used prior to the cancellation on
 513 which the tax has not been paid.

514 C. The Commissioner may cancel any license upon the written request of the licensee.

515 D. Upon cancellation of any license and payment by the licensee of all taxes due, including all
 516 penalties accruing due to any failure by the licensee to comply with the provisions of this chapter, the
 517 Commissioner shall cancel and surrender the bond, certificate of deposit, or irrevocable letter of credit
 518 filed by such licensee.

519 § 58.1-2216. Records and lists of license applicants and licensees.

520 A. The Commissioner shall keep a record of (i) applicants for a license under this chapter; (ii)
 521 persons to whom a license has been issued under this chapter; and (iii) persons holding a current
 522 license issued under this chapter, by license category.

523 B. The Commissioner shall provide a list of licensees to any licensee, as well as to any unlicensed
 524 distributor who requests a copy. The list shall state the name, account number, and business address of
 525 each licensee on the list and may include other information determined appropriate by the
 526 Commissioner.

527 Article 3.

528 Motor Fuel Tax; Liability.

529 § 58.1-2217. Taxes levied; rate.

530 A. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline
 531 and gasahol.

532 B. There is hereby levied a tax at the rate of sixteen cents per gallon on diesel fuel.

533 C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that
 534 contains diesel fuel shall be taxed at the rate levied on diesel fuel.

535 D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person,
 536 whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in
 537 highway vehicles any aviation gasoline shall be liable for the tax at the rate of seventeen and one-half
 538 cents per gallon, along with any penalties and interest that may accrue.

539 E. There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or
 540 acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a
 541 tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding
 542 bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year.
 543 There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding
 544 bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000
 545 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires
 546 for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter
 547 shall be liable for the tax imposed at the rate of sixteen cents per gallon, along with any penalties and
 548 interest that may accrue.

549 F. In accordance with § 62.1-44:34:13, a storage tank fee is imposed on each gallon of gasoline,
 550 aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and
 551 delivered or used in the Commonwealth.

552 § 58.1-2218. *Point of imposition of motor fuels tax.*

553 *The tax levied pursuant to § 58.1-2217 is imposed at the point that the motor fuel is:*

554 1. *Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax*
555 *imposed by 26 U.S.C. § 4081;*

556 2. *Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the*
557 *federal excise tax imposed by 26 U.S.C. § 4081;*

558 3. *Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in*
559 *Virginia and would have been subject to the federal excise tax imposed by 26 U.S.C. § 4081 if it had*
560 *been removed at a terminal or bulk plant rack in Virginia instead of being imported;*

561 4. *If the motor fuel is gasahol, (i) removed from a terminal or another storage and distribution*
562 *facility, unless the removed fuel is received by a supplier for subsequent sale, or (ii) imported into*
563 *Virginia outside the terminal transfer system by a means other than a marine vessel, a transport truck,*
564 *or a railroad tank car;*

565 5. *If the motor fuel is blended fuel, made within Virginia or imported into Virginia; or*

566 6. *Transferred within the terminal transfer system and, upon transfer, is subject to the federal excise*
567 *tax imposed by 26 U.S.C. § 4081.*

568 § 58.1-2219. *Liability for tax on removals from a terminal.*

569 A. *The tax imposed pursuant to § 58.1-2217 at the point that motor fuel is removed by a system*
570 *transfer from a terminal in Virginia shall be paid by the position holder of the fuel; however, if the*
571 *position holder is not the terminal operator, the terminal operator and position holder shall be jointly*
572 *and severally liable for the tax.*

573 B. *The tax imposed pursuant to § 58.1-2217 at the point that motor fuel is removed at a terminal*
574 *rack in Virginia shall be payable by the person that first receives the fuel upon its removal from the*
575 *terminal. If the motor fuel is first received by an unlicensed distributor, the supplier of the fuel shall be*
576 *liable for payment of the tax due on the fuel. If the motor fuel is sold by a person who is not licensed*
577 *as a supplier, then (i) the terminal operator, and (ii) the person selling the fuel shall be jointly and*
578 *severally liable for payment of the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel*
579 *but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal*
580 *operator, the supplier, and the person removing the fuel shall be jointly and severally liable for payment*
581 *of the tax due on the fuel.*

582 § 58.1-2220. *Liability for tax on imports.*

583 A. *The tax imposed pursuant to § 58.1-2217 at the point that motor fuel is imported by a system*
584 *transfer (i) to a refinery shall be payable by the refiner or (ii) to a terminal shall be jointly and*
585 *severally payable by the person importing the fuel and by the terminal operator.*

586 B. *The tax imposed pursuant to § 58.1-2217 at the point that motor fuel is removed from a terminal*
587 *rack located in another state and has Virginia as its destination state shall be payable:*

588 1. *If the importer of the fuel is a licensed supplier in Virginia and the fuel is removed for the*
589 *supplier's own account for use in Virginia, by the supplier;*

590 2. *If the supplier of the fuel is licensed in Virginia as an elective supplier or a permissive supplier,*
591 *by the importer of the fuel to the supplier as trustee; or*

592 3. *If subdivisions 1 and 2 do not apply, by the importer of the fuel when filing a return with the*
593 *Commissioner.*

594 C. *The tax imposed pursuant to § 58.1-2217 at the point that motor fuel is removed from a bulk*
595 *plant located in another state shall be payable by the person that imports the fuel.*

596 § 58.1-2221. *Liability for tax on gasahol.*

597 *The tax imposed pursuant to § 58.1-2217 at the point that gasahol (i) is removed from a storage*
598 *facility shall be payable by the provider or (ii) is imported to Virginia shall be payable by the importer.*

599 § 58.1-2222. *Liability for tax on blended fuel.*

600 A. *The tax imposed pursuant to § 58.1-2217 at the point that blended fuel is made in Virginia shall*
601 *be payable by the blender. The number of gallons of blended fuel on which the tax is payable is the*
602 *difference between the number of gallons of blended fuel made and the number of gallons of previously*
603 *taxed motor fuel used to make the blended fuel.*

604 B. *The tax imposed pursuant to § 58.1-2217 at the point that blended fuel is imported to Virginia*
605 *shall be payable by the importer.*

606 C. *The following blended fuel shall be considered to have been made by the supplier of gasoline or*
607 *undyed diesel fuel used in the blend:*

608 1. *An in-line-blend made by combining a liquid with gasoline or undyed diesel fuel as the fuel is*
609 *delivered at a terminal rack into the motor fuel storage compartment of a transport truck or a tank*
610 *wagon; and*

611 2. *A kerosene splash-blend made when kerosene is delivered into a motor fuel storage compartment*
612 *of a transport truck or a tank wagon and undyed diesel fuel is also delivered into the same storage*
613 *compartment, if the buyer of the kerosene notified the supplier before or at the time of delivery that the*

614 kerosene would be used to make a splash-blend.

615 § 58.1-2223. Liability for tax on fuel transferred within terminal transfer system.

616 The tax imposed pursuant to § 58.1-2217 at the point that motor fuel is transferred within the
617 terminal transfer system shall be jointly and severally payable by the supplier of the fuel, the person
618 receiving the fuel, and the terminal operator of the terminal at which the fuel was transferred.

619 § 58.1-2224. Tax on unaccounted for motor fuel losses; liability.

620 A. There is hereby levied a tax at the rate specified by § 58.1-2217 annually on taxable unaccounted
621 for motor fuel losses at a terminal. "Taxable unaccounted for motor fuel losses" means the number of
622 gallons of unaccounted for motor fuel losses that exceed one-half of one percent of the number of net
623 gallons removed from the terminal during the year by a system transfer or at the terminal rack.
624 "Unaccounted for motor fuel losses" means the difference between (i) the amount of motor fuel in
625 inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the
626 terminal during the year and (ii) the amount of motor fuel in inventory at the terminal at the end of the
627 year plus the amount of motor fuel removed from the terminal during the year. Accounted for motor fuel
628 losses which have been approved by the Commissioner or motor fuel losses constituting part of a
629 transmix shall not constitute unaccounted for motor fuel losses.

630 B. The terminal operator whose motor fuel is unaccounted for shall be liable for the tax imposed by
631 this section, together with a penalty equal to the amount of tax payable. Motor fuel received by a
632 terminal operator and not shown on an informational return filed by the terminal operator with the
633 Commissioner as having been removed from the terminal shall be presumed to be unaccounted for
634 motor fuel losses. A terminal operator may rebut this presumption by establishing that motor fuel
635 received at a terminal, but not shown on an informational return as having been removed from the
636 terminal, was an accounted for loss or constitutes part of a transmix.

637 § 58.1-2225. Backup tax; liability.

638 A. There is hereby levied a tax at the rate specified in § 58.1-2217 on the following:

639 1. Dyed diesel fuel that is used to operate a highway vehicle for a taxable use other than a use
640 allowed under 26 U.S.C. § 4082;

641 2. Motor fuel that was allowed an exemption from the motor fuel tax and was then used for a
642 taxable purpose; and

643 3. Motor fuel that is used to operate a highway vehicle after an application for a refund of tax paid
644 on the motor fuel is made or allowed on the basis that the motor fuel was used for an off-highway
645 purpose.

646 B. The operator of a highway vehicle that uses motor fuel that is taxable under this section is liable
647 for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the
648 operator of the highway vehicle and the motor carrier shall be jointly and severally liable for the tax. If
649 the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel
650 would be used for a purpose that is taxable under this section, the operator of the highway vehicle and
651 the end seller shall be jointly and severally liable for the tax.

652 C. An end seller of dyed diesel fuel shall be deemed to have known or had reason to know that the
653 fuel would be used for a purpose that is taxable under this section if the end seller delivered the fuel
654 into a storage facility that was not marked as required by § 58.1-2279.

655 D. The tax liability imposed by this section shall be in addition to any other penalty imposed
656 pursuant to this chapter.

657 § 58.1-2226. Exemptions from tax.

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

659 1. Motor fuel sold and delivered to a governmental entity for the exclusive use by the governmental
660 entity. This exemption shall not apply with respect to fuel sold or delivered to any person operating
661 under contract with the governmental entity;

662 2. Motor fuel sold and delivered to a nonprofit charitable organization which is exempt from
663 taxation under § 501 (c) (3) of the Internal Revenue Code and which is organized and operated
664 exclusively for the purpose of providing charitable, long-distance, advanced life-support, air ambulance
665 services for low-income medical patients in the Commonwealth, for the exclusive use of such
666 organization in the operation of an aircraft;

667 3. Bonded aviation jet fuel;

668 4. Dyed diesel fuel, except as provided in subsection A 1 of § 58.1-2225;

669 5. Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer
670 system, from a terminal for export, if the supplier of the motor fuel collects tax on the fuel at the rate of
671 the motor fuel's destination state; or

672 6. Heating oil, as defined in § 58.1-2201.

673 § 58.1-2227. Sales of aviation jet fuel to licensed aviation consumers.

674 A licensed aviation consumer required to file a monthly return and remit taxes to the Department

675 pursuant to § 58.1-2230 shall not be required to remit tax to a supplier or distributor for purchases of
676 aviation jet fuel.

677 § 58.1-2228. Exempt access cards; exempt access codes.

678 A. A licensed distributor, licensed importer or, in the case of aviation jet fuel, a licensed aviation
679 consumer shall only remove motor fuel from a terminal by means of a supplier-issued exempt access
680 card or exempt access code if (i) the motor fuel will be resold to a governmental entity or an
681 organization exempt from tax under subdivision 2 of § 58.1-2226 for a purpose that is exempt from the
682 tax or (ii) the aviation jet fuel will be used by the aviation consumer or resold to a licensed aviation
683 consumer. The use of such exempt access card or exempt access code shall constitute a representation
684 by the licensed distributor, licensed importer or licensed aviation consumer that the removal of the
685 motor fuel is permitted. A supplier shall be authorized to rely on this representation. A licensed
686 distributor or licensed importer who does not resell motor fuel removed from a terminal by means of an
687 exempt access card or exempt access code to an exempt governmental unit or an organization exempt
688 from tax under subdivision 2 of § 58.1-2226 is liable for any tax due on the fuel. A licensed distributor
689 or licensed importer who does not resell aviation jet fuel removed from a terminal by means of an
690 exempt access card or exempt access code to a licensed aviation consumer is liable for any tax due on
691 the aviation jet fuel.

692 B. A supplier who issues to, or authorizes another person to issue to, another person an exempt
693 access card or an exempt access code that enables the person to buy motor fuel at retail without paying
694 the tax on the fuel shall determine if the person is exempt from the tax or, in the case of aviation jet
695 fuel, is a licensed aviation consumer allowed to purchase aviation jet fuel without payment of tax. A
696 supplier is liable for tax due on motor fuel purchased at retail by use of an exempt access card or an
697 exempt access code issued to a person who is not exempt from the tax or, in the case of aviation jet
698 fuel, is not a licensed aviation consumer allowed to purchase aviation jet fuel without payment of tax.

699 C. A person to whom an exempt access card or exempt access code is issued for use at a terminal is
700 liable for any tax due on fuel purchased with the exempt access card or exempt access code for a
701 purpose that is not exempt. A person who misuses an exempt access card or exempt access code by
702 purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the
703 fuel. The provisions of this subsection shall apply to the misuse of a card or code that allows a person
704 to purchase aviation jet fuel without paying the tax.

705 D. The tax liability imposed by this section shall be in addition to any other penalty imposed
706 pursuant to this chapter.

707 § 58.1-2229. Removals by out-of-state bulk user.

708 An out-of-state bulk user shall not remove motor fuel from a terminal in the Commonwealth for use
709 in the state in which the bulk user is located unless the bulk user is licensed under this chapter as an
710 exporter.

711 Article 4.

712 Payment and Reporting of Tax on Motor Fuel.

713 § 58.1-2230. When tax return and payment are due.

714 A. A return for the tax on motor fuel levied by this chapter shall be filed with the Commissioner and
715 be in the form and contain the information required by the Commissioner. The return and the payment
716 for the tax on motor fuel levied by this chapter shall be due for each full month in a calendar year. Any
717 return and payment required under this section shall be deemed timely filed if received by the
718 Commissioner by midnight of the twentieth day of the second month succeeding the month for which the
719 return and payment are due. Each return shall report tax liabilities that accrue in the month for which
720 the return is due.

721 B. Returns and payments shall be (i) postmarked by the fifteenth day of the second month succeeding
722 the month for which the return is due or (ii) received by the Department by the twentieth day of the
723 second month succeeding the month for which the return is due. However, a monthly return of the tax
724 for the month of May shall be (i) postmarked by June 25 or (ii) received by the Commissioner by the
725 last business day the Department is open for business in June.

726 If a tax return due date falls on a Saturday, Sunday, or a state or banking holiday, the return shall
727 be postmarked or received by the Department by midnight of the next business day the Department is
728 open for business. This provision shall not apply to a return of the tax for the month of May.

729 A return shall be deemed postmarked if it carries the official cancellation mark of the United States
730 Postal Service or other postal or delivery services.

731 C. The following shall file a monthly return as required by this section:

732 1. A refiner;

733 2. A terminal operator;

734 3. A supplier;

735 4. A distributor;

736 5. An importer to include a bonded importer;

- 737 6. A blender;
- 738 7. An aviation consumer;
- 739 8. A person incurring liability under § 58.1-2225 for the backup tax on motor fuel; and
- 740 9. An elective supplier.
- 741 D. Notwithstanding the provisions of any other section in this chapter, the Commissioner may
- 742 require all or certain licensees to file tax returns and payments electronically.
- 743 § 58.1-2231. Remittance of tax to supplier.
- 744 A. A distributor shall remit tax due on motor fuel removed at a terminal rack to the supplier of the
- 745 fuel. A licensed distributor shall not be required to remit the tax to the supplier until the date the
- 746 supplier is required to pay the tax to the Commonwealth or to another state. All tax payments received
- 747 by a supplier shall be held in trust by the supplier until the supplier remits the tax payment to the
- 748 Commonwealth or to another state, and the supplier shall constitute the trustee for such tax payments.
- 749 The date by which an unlicensed distributor is required to remit the tax to a supplier shall be governed
- 750 by agreement between the supplier and the unlicensed distributor.
- 751 B. A licensed exporter shall remit tax due on motor fuel removed at a terminal rack to the supplier
- 752 of the fuel. The date by which an exporter shall remit tax shall be governed by the law of the
- 753 destination state of the exported motor fuel.
- 754 C. A licensed importer shall remit tax due on motor fuel removed at a terminal rack of a permissive
- 755 or an elective supplier to the supplier of the fuel. A licensed importer who removes fuel from a terminal
- 756 rack of a permissive or an elective supplier shall not be required to remit the tax to the supplier until
- 757 the date the supplier is required to pay the tax to the Commonwealth.
- 758 D. The license of a licensed distributor, exporter or importer who fails to pay the full amount of tax
- 759 required by this chapter is subject to cancellation as provided in § 58.1-2215.
- 760 § 58.1-2232. Notice of cancellation or reissuance of licenses; effect of notice.
- 761 A. If the Commissioner cancels the license of a distributor, importer, or aviation consumer, the
- 762 Commissioner shall notify all suppliers of the cancellation. If the Commissioner issues a license to a
- 763 distributor, importer or aviation consumer whose license was previously canceled, the Commissioner
- 764 shall notify all suppliers of the issuance.
- 765 B. A supplier who sells motor fuel to a distributor or aviation consumer after receiving notice from
- 766 the Commissioner that the Commissioner has canceled the distributor's or aviation consumer's license
- 767 shall be jointly and severally liable with the distributor or aviation consumer for any tax due on motor
- 768 fuel the supplier sells to the distributor or aviation consumer after receiving the notice; however, the
- 769 supplier shall not be liable for tax due on motor fuel sold to a previously unlicensed distributor or
- 770 aviation consumer after the supplier receives notice from the Commissioner that the Commissioner has
- 771 issued another license to the distributor or aviation consumer.
- 772 C. If the Commissioner cancels the license of a supplier, the Commissioner shall notify all licensed
- 773 distributors, exporters, importers and aviation consumers of the cancellation. If the Commissioner issues
- 774 a license to a supplier whose license was previously canceled, the Commissioner shall notify all licensed
- 775 distributors, exporters, importers and aviation consumers of the issuance.
- 776 D. A licensed distributor, exporter, importer, or aviation consumer who purchases motor fuel from a
- 777 supplier after receiving notice from the Commissioner that the Commissioner has canceled the supplier's
- 778 license shall be jointly and severally liable with the supplier for any tax due on motor fuel purchased
- 779 from the supplier after receiving the notice; however, the licensed distributor, exporter, importer, or
- 780 aviation consumer shall not be liable for tax due on motor fuel purchased from a previously unlicensed
- 781 supplier after the licensee receives notice from the Commissioner that the Commissioner has issued
- 782 another license to the supplier.
- 783 § 58.1-2233. Deductions; percentage discount.
- 784 A. A licensed importer who removes motor fuel from a terminal rack of a permissive or an elective
- 785 supplier or licensed distributor may deduct from the amount of tax otherwise payable to a supplier the
- 786 amount calculated on motor fuel that the licensee received from the supplier and resold to a
- 787 governmental entity, or resold to an organization described in subdivision 2 of § 58.1-2226 for use in
- 788 the operation of an aircraft if, when removing the fuel, the licensee used an exempt access card or
- 789 exempt access code specified by the supplier to notify the supplier of the licensee's intent to resell the
- 790 fuel in an exempt sale.
- 791 B. A licensed importer who removes motor fuel from a terminal rack of a permissive supplier, an
- 792 elective supplier, or a licensed distributor may deduct from the amount of tax otherwise payable to a
- 793 supplier the amount calculated on aviation jet fuel that the licensee received from the supplier and
- 794 resold to a licensed aviation consumer if, when removing the fuel, the licensee used an exempt access
- 795 card or exempt access code specified by the supplier to notify the supplier of the licensee's intent to
- 796 resell the aviation jet fuel to a licensed aviation consumer.
- 797 C. A licensed distributor who pays the tax due a supplier by the date the supplier is required to

798 remit the tax to this Commonwealth may deduct from the amount due a discount of one percent of the
 799 amount of tax payable. A licensed importer who (i) removes motor fuel from a terminal rack of a
 800 permissive or an elective supplier and (ii) pays the tax due to the supplier by the date the supplier is
 801 required to remit the tax to the Commonwealth may deduct from the amount due a discount of one
 802 percent of the amount of tax payable. A supplier shall not directly or indirectly deny this discount to a
 803 licensed distributor or licensed importer who pays the tax due the supplier by the date the supplier is
 804 required to remit the tax to the Commonwealth.

805 § 58.1-2234. Monthly reconciling returns.

806 A. A licensed distributor or a licensed importer who deducts exempt sales under subsection A of
 807 § 58.1-2233 or sales of aviation jet fuel to a licensed aviation consumer under subsection B of
 808 § 58.1-2233 when paying tax to a supplier shall file a monthly reconciling return for the exempt sales
 809 and sales to a licensed aviation consumer. The return shall list the following information and any other
 810 information required by the Commissioner:

811 1. The number of gallons for which a deduction was taken during the month, by supplier;

812 2. The number of gallons sold in exempt sales during the month, by type of sale, and the purchasers
 813 of the fuel in the exempt sales; and

814 3. The number of gallons of aviation jet fuel sold without collection of the tax during the month, and
 815 the purchasers of the fuel.

816 B. If the number of gallons for which a licensed distributor or licensed importer takes a deduction
 817 during a month exceeds the number of exempt gallons sold or, in the case of aviation jet fuel, the
 818 number of gallons sold without collection of the tax, the licensed distributor or licensed importer shall
 819 pay tax on the difference at the rate imposed by § 58.1-2217. The licensed distributor or licensed
 820 importer shall not be allowed a percentage discount on any tax payable under this subsection.

821 C. If the number of gallons for which a licensed distributor or licensed importer takes a deduction
 822 during a month is less than the number of exempt gallons sold or, in the case of aviation jet fuel, is less
 823 than the number of gallons sold without collection of the tax, the Commissioner shall refund the amount
 824 of tax paid on the difference. The Commissioner shall reduce the amount of the refund by the amount of
 825 the percentage discount received on the fuel.

826 § 58.1-2235. Information required on return filed by supplier.

827 A. A return of a supplier shall list all of the following information and any other information
 828 required by the Commissioner:

829 1. The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by
 830 type of fuel, seller, point of origin, destination state, and carrier;

831 2. The number of gallons of motor fuel removed at a terminal rack during the month from the
 832 account of the supplier, sorted by type of fuel, person receiving the fuel, terminal code, and carrier;

833 3. The number of gallons of motor fuel removed during the month for export, sorted by type of fuel,
 834 person receiving the fuel, terminal code, destination state, and carrier;

835 4. The number of gallons of motor fuel removed during the month from a terminal located in another
 836 state for conveyance to Virginia, as indicated on the shipping document for the fuel, sorted by type of
 837 fuel, person receiving the fuel, terminal code, and carrier;

838 5. The number of gallons of motor fuel the supplier sold during the month to the following, sorted by
 839 type of fuel, exempt entity, person receiving the fuel, terminal code, and carrier:

840 a. A governmental entity whose use of fuel is exempt from the tax;

841 b. A licensed aviation consumer purchasing aviation jet fuel;

842 c. A licensed distributor or importer who resold the motor fuel to a governmental unit whose use of
 843 fuel is exempt from the tax, as indicated by the distributor or importer;

844 d. A licensed distributor or importer who resold aviation jet fuel to a licensed aviation consumer as
 845 indicated by the distributor or importer;

846 e. A licensed exporter who resold the motor fuel to a person whose use of the fuel is exempt from
 847 tax in the destination state, as indicated by the exporter;

848 f. A nonprofit charitable organization which is exempt from taxation under § 501 (c) (3) of the
 849 Internal Revenue Code and which is organized and operated exclusively for the purpose of providing
 850 charitable, long-distance, advanced life-support, air ambulance services for low-income medical patients
 851 in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft; and

852 g. A licensed distributor or importer who resold the motor fuel to a nonprofit charitable organization
 853 which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and which is organized
 854 and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support,
 855 air ambulance services for low-income medical patients in the Commonwealth, for the exclusive use of
 856 such organization in the operation of an aircraft; and

857 6. The amount of discounts allowed under subsection C of § 58.1-2233 on motor fuel sold during the
 858 month to licensed distributors or licensed importers.

859 B. Suppliers shall not require information identifying who purchased exempt fuel from persons

860 licensed under this chapter.

861 § 58.1-2236. Deductions and discounts allowed a supplier when filing a return.

862 A. The supplier may deduct from the next monthly return those tax payments that were not remitted
863 for the previous month to the supplier by (i) a licensed distributor or (ii) a licensed importer who
864 removed the motor fuel on which the tax is due from a terminal of an elective or a permissive supplier.
865 A supplier shall not be liable for the tax such a licensee owes the supplier but fails to pay. If such
866 licensee pays the tax owed to a supplier after the supplier deducts the amount of such tax on a return,
867 the supplier shall remit the payment to the Commissioner with the next monthly return filed subsequent
868 to receipt of the tax.

869 B. A supplier who timely files a return with the payment due may deduct, from the amount of tax
870 payable with the return, an administrative discount of one-tenth of one percent of the amount of tax
871 payable to the Commonwealth, not to exceed \$5,000 per month.

872 C. A supplier who sells motor fuel directly to an unlicensed distributor or to a bulk user, retailer, or
873 user of the fuel may take one-half of the same percentage discount on the fuel that a licensed distributor
874 may take under subsection C of § 58.1-2233 when making deferred payments of tax to the supplier.

875 D. When filing a return, a supplier who issues or authorizes the issuance of an exempt access card
876 or an exempt access code to a person that enables the person to buy motor fuel at retail without paying
877 tax on the fuel may deduct the amount of tax imposed on fuel purchased with the exempt access card or
878 exempt access code. The amount of tax imposed on fuel purchased at retail with an exempt access card
879 or exempt access code is the amount that was imposed on the fuel when it was delivered to the retailer
880 of the fuel.

881 § 58.1-2237. Duties of supplier as trustee.

882 A. All tax payments due to the Commonwealth received by a supplier pursuant to § 58.1-2231 shall
883 be held by the supplier as trustee in trust for the Commonwealth, and a supplier has a fiduciary duty to
884 remit to the Commissioner the amount of tax received by the supplier. A supplier shall be liable for the
885 taxes paid to him.

886 B. A supplier shall notify a licensed distributor, licensed exporter, or licensed importer who received
887 motor fuel from the supplier during a reporting period of the number of taxable gallons received. The
888 supplier shall give this notice after the end of each reporting period and before the licensee is required
889 to remit to the supplier the amount of tax due on the fuel.

890 C. A supplier of motor fuel at a terminal shall notify the Commissioner within ten business days
891 after a return is due of any licensed distributors, licensed exporters, or licensed importers who did not
892 pay the tax due the supplier when the supplier filed his return. The notice shall be transmitted to the
893 Commissioner in the form required by the Commissioner.

894 D. A supplier who receives a payment of tax shall not apply the payment to a debt that the person
895 making the payment owes the supplier for motor fuel purchased from the supplier.

896 § 58.1-2238. Returns and discounts of importers.

897 A. A monthly return of a bonded importer or an occasional importer shall contain the following
898 information concerning motor fuel imported during the period covered by the return and any other
899 information required by the Commissioner:

900 1. The number of gallons of imported motor fuel acquired from a supplier who collected the tax due
901 the Commonwealth on the fuel;

902 2. The number of gallons of imported motor fuel acquired from a supplier who did not collect the
903 tax due the Commonwealth on the fuel, listed by source state, supplier, and terminal;

904 3. The import confirmation number, as required under § 58.1-2264 of this chapter, of each import
905 that is reported under subdivision 2 and was removed from a terminal; and

906 4. If he is an occasional importer, the number of gallons of imported motor fuel acquired from a
907 bulk plant, listed by bulk plant.

908 B. An importer shall not deduct an administrative discount under subsection C of § 58.1-2233 from
909 the amount remitted with a return. An importer who imports motor fuel received from an elective
910 supplier or a permissive supplier may deduct the percentage discount allowed by subsection C of
911 § 58.1-2233 when remitting tax to the supplier, as trustee, for payment to the Commonwealth. An
912 importer who imports motor fuel received from a supplier who is not an elective supplier or a
913 permissive supplier shall not deduct the percentage discount allowed by subsection C of § 58.1-2233
914 when filing a return for the tax due.

915 § 58.1-2239. Returns and discounts of aviation consumers.

916 A. A monthly return of an aviation consumer shall state the number of gallons of aviation jet fuel
917 acquired from a supplier or distributor who did not collect the tax due the Commonwealth on the fuel,
918 listed by source state, supplier or distributor, and terminal or other source, with respect to aviation jet
919 fuel purchased during the period covered by the return and any other information required by the
920 Commissioner.

921 B. An aviation consumer shall be allowed a credit for aviation jet fuel purchased, on which tax has
 922 already been paid. The amount of such credit shall not exceed the amount of fuel taxes due from such
 923 aviation consumer, nor shall the credit be carried forward to the next fiscal year.

924 § 58.1-2240. Informational returns of terminal operators.

925 A terminal operator shall file a monthly informational return with the Commissioner that shows the
 926 amount of motor fuel received or removed from the terminal during the month. The return is due by the
 927 twentieth day of the second month following the month covered by the return. The return shall contain
 928 the following information and any other information required by the Commissioner:

929 1. The number of gallons of motor fuel received in inventory at the terminal during the month and
 930 each position holder for the fuel;

931 2. The number of gallons of motor fuel removed from inventory at the terminal during the month
 932 and, for each removal, the position holder for the fuel and the destination state of the fuel; and

933 3. The number of gallons of motor fuel gained or lost at the terminal during the month.

934 § 58.1-2241. Informational returns of motor fuel transporters.

935 A. A person who transports, by pipeline, marine vessel, railroad tank car, or transport truck, motor
 936 fuel that is imported into Virginia or exported from Virginia shall file a monthly informational return
 937 with the Commissioner that shows motor fuel received or delivered for import or export by the
 938 transporter during the month. This requirement does not apply to a distributor who is not required to be
 939 licensed as a motor fuel transporter.

940 B. The return required by this section is due by the twentieth day of the second month following the
 941 month covered by the return. The return shall contain the following information and any other
 942 information required by the Commissioner:

943 1. The name and address of each person from whom the transporter received motor fuel outside
 944 Virginia for delivery in Virginia, the amount of motor fuel received, the date the motor fuel was
 945 received, and the destination state of the fuel; and

946 2. The name and address of each person from whom the transporter received motor fuel in Virginia
 947 for delivery outside Virginia, the amount of motor fuel delivered, the date the motor fuel was delivered,
 948 and the destination state of the fuel.

949 § 58.1-2242. Return of distributors; exports.

950 A. A distributor who exports motor fuel from a bulk plant located in Virginia shall file a monthly
 951 return with the Commissioner identifying the exports. The return is due by the twentieth day of the
 952 second month following the month covered by the return. The return shall serve as a claim for a refund
 953 by the distributor for tax paid to the Commonwealth on the exported motor fuel.

954 B. The return shall contain the following information and any other information required by the
 955 Commissioner:

956 1. The number of gallons of motor fuel exported during the month;

957 2. The destination state of the motor fuel exported during the month; and

958 3. A certification that the distributor has paid to the destination state of the motor fuel exported
 959 during the month, or will timely pay, the amount of tax due that state on the fuel.

960 § 58.1-2243. Use of name and account number on return.

961 When a transaction with a person licensed under this chapter is required to be reported on a return,
 962 the return must state the licensee's name and account number as stated on the lists compiled by the
 963 Commissioner under § 58.1-2216.

964 Article 5.

965 Provisions Applicable to Alternative Fuels.

966 § 58.1-2244. Persons required to be licensed.

967 A person shall obtain a license before conducting the activities of:

968 1. A provider of alternative fuel;

969 2. A bulk user of alternative fuel;

970 3. A retailer of alternative fuel; or

971 4. A person who fuels his highway vehicle from his private source, if the alternative fuels tax on
 972 alternative fuel used in the vehicle has not been paid.

973 § 58.1-2245. License application procedure.

974 To obtain a license under this article, an applicant shall file an application with the Commissioner
 975 on a form provided by the Commissioner. The application shall include the applicant's name, address,
 976 federal employer identification number, and any other information required by the Commissioner.

977 § 58.1-2246. Bond, certificate of deposit, or letter of credit requirements.

978 A. An applicant for a license as a (i) provider of alternative fuel, (ii) retailer of alternative fuel or
 979 bulk user of alternative fuel who stores highway and nonhighway alternative fuel in the same storage
 980 tank, or (iii) retailer of alternative fuel or a bulk user of alternative fuel who wishes to defer the
 981 remittance of tax to the provider until the date the provider of alternative fuel is required to pay the tax
 982 to the Commonwealth, shall file with the Commissioner a bond, certificate of deposit, or an irrevocable

983 letter of credit.

984 B. The amount of the bond, certificate of deposit, or irrevocable letter of credit shall be three times
985 the applicant's average expected monthly tax liability under this article, as determined by the
986 Commissioner. The amount shall not be less than \$2,000 nor more than \$300,000. An applicant who is
987 also required to file a bond, a certificate of deposit, or an irrevocable letter of credit under § 58.1-2211
988 to obtain a license as a distributor of motor fuel may file a single bond, certificate of deposit, or
989 irrevocable letter of credit under § 58.1-2211 for the combined amount and shall not be required to file
990 a bond, certificate of deposit or irrevocable letter of credit for more than \$300,000 for the combined
991 amount.

992 C. A bond, certificate of deposit, or irrevocable letter of credit filed under this section shall be
993 conditioned upon compliance with this chapter, be payable to the Commonwealth, and be in the form
994 required by the Commissioner. The Commissioner may require a bond, a certificate of deposit, or an
995 irrevocable letter of credit issued under this section to be adjusted in accordance with the procedure set
996 out in subsection C of § 58.1-2211 for adjusting a bond, certificate of deposit, or irrevocable letter of
997 credit filed by a distributor of motor fuel.

998 § 58.1-2247. Issuance, denial or cancellation of license.

999 A. The Commissioner shall issue a license to each applicant whose application is approved. A
1000 license shall not be transferable and remains in effect until surrendered or canceled.

1001 B. The Commissioner may refuse to issue a license under this article to an applicant if (i) the
1002 applicant or (ii) any principal of the applicant that is a business entity has:

1003 1. Had a license or registration issued under prior law or this chapter canceled by the
1004 Commissioner for cause;

1005 2. Had an alternative fuel license or registration issued by another state canceled for cause;

1006 3. Had a federal Certificate of Registry issued under § 4101 of the Internal Revenue Code, or a
1007 similar federal authorization, revoked;

1008 4. Been convicted of any offense involving fraud or misrepresentation; or

1009 5. Been convicted of any other offense that indicates that the applicant may not comply with this
1010 chapter if issued a license.

1011 C. The Commissioner may cancel the license of any person licensed under this article, upon written
1012 notice sent by registered mail to the licensee's last known address appearing in the Commissioner's files,
1013 for any of the following reasons:

1014 1. Filing by the licensee of a false report of the data or information required by this article;

1015 2. Failure, refusal, or neglect of the licensee to comply with any provision of this chapter or any
1016 regulation promulgated pursuant to this chapter;

1017 3. Failure of the licensee to pay the full amount of the tax required by this article;

1018 4. Failure of the licensee to keep accurate records of the quantities of alternative fuel received,
1019 produced, refined, manufactured, compounded, sold, or used in the Commonwealth;

1020 5. Failure to file a new or additional bond or irrevocable letter of credit upon request of the
1021 Commissioner pursuant to § 58.1-2246; or

1022 6. Conviction of the licensee or a principal of the licensee for any prohibited act listed under this
1023 article.

1024 D. Upon cancellation of any license for any cause listed in subsection C, the tax levied under this
1025 chapter shall become due and payable on (i) all untaxed alternative fuel held in storage or otherwise in
1026 the possession of the licensee and (ii) all alternative fuel sold, delivered, or used prior to the
1027 cancellation on which the tax has not been paid.

1028 E. The Commissioner may cancel any license upon the written request of the licensee.

1029 F. Upon cancellation of any license and payment by the licensee of all taxes due, including all
1030 penalties accruing due to any failure by the licensee to comply with the provisions of this article, the
1031 Commissioner shall cancel and surrender the bond, certificate of deposit, or irrevocable letter of credit
1032 filed by such licensee.

1033 § 58.1-2248. Notice of discontinuance, sale or transfer of business.

1034 A. A licensee who discontinues in the Commonwealth the business for which the license was issued
1035 shall notify the Commissioner in writing of such discontinuance and shall surrender the license to the
1036 Commissioner. The notice shall state the effective date of the discontinuance and, if the license holder
1037 has transferred the business or otherwise relinquished control to another person by sale or otherwise,
1038 the date of the sale or transfer and the name and address of the person to whom the business is
1039 transferred or relinquished. The notice shall also include any other information required by the
1040 Commissioner.

1041 B. All taxes for which the license holder is liable under this article but are not yet due shall be due
1042 on the date of the discontinuance. If the license holder has transferred the business to another person
1043 and does not give the notice required by this section, the person to whom the business was transferred

1044 shall be liable for the amount of any tax owed by the license holder to the Commonwealth on the date
1045 the business was transferred. The liability of the person to whom the business was transferred shall not
1046 exceed the value of the property acquired from the license holder.

1047 § 58.1-2249. Tax on alternative fuel.

1048 A. There is hereby levied a tax at the rate of sixteen cents per gallon on liquid alternative fuel used
1049 to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of
1050 supplying fuel to operate the vehicle. There is hereby levied a tax at a rate equivalent to sixteen cents
1051 per gallon on all other alternative fuel used to operate a highway vehicle. The Commissioner shall
1052 determine the equivalent rate applicable to such other alternative fuels.

1053 B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of fifty
1054 dollars per vehicle on each highway vehicle that is fueled from a private source if the alternative fuels
1055 tax levied under this article has not been paid on fuel used in the vehicle. If such a highway vehicle is
1056 not in operation by January 1 of any year, the license tax shall be reduced by one-twelfth for each
1057 complete month which shall have elapsed since the beginning of such year.

1058 § 58.1-2250. Exemptions from tax.

1059 No tax shall be levied or collected pursuant to this article on:

1060 1. Alternative fuel sold and delivered to a governmental entity for the exclusive use by the
1061 governmental entity. This exemption shall not apply with respect to alternative fuel sold or delivered to
1062 any person operating under contract with the governmental entity; and

1063 2. Alternative fuel sold and delivered to a nonprofit charitable organization which is exempt from
1064 taxation under § 501 (c) (3) of the Internal Revenue Code and which is organized and operated
1065 exclusively for the purpose of providing charitable, long-distance, advanced life-support, air ambulance
1066 services for low-income medical patients in the Commonwealth, for the exclusive use of such
1067 organization in the operation of an aircraft.

1068 § 58.1-2251. Liability for tax; filing returns; payment of tax.

1069 A. A bulk user of alternative fuel or retailer of alternative fuel who stores highway and nonhighway
1070 alternative fuel in the same storage tank shall be liable for the tax imposed by this article, and shall file
1071 tax returns and remit taxes in accordance with subsection D. The tax payable by a bulk user of
1072 alternative fuel or retailer of alternative fuel is imposed at the point that alternative fuel is withdrawn
1073 from the storage tank.

1074 B. A provider of alternative fuel who sells or delivers alternative fuel shall be liable for the tax
1075 imposed by this article (i) on sales to a bulk user of alternative fuel or retailer of alternative fuel who
1076 stores highway product in a separate storage tank or (ii) if the alternative fuel is sold or used by the
1077 provider of alternative fuel for highway use.

1078 C. The owner of a highway vehicle subject to an annual license tax pursuant to subsection B of
1079 § 58.1-2249 shall be liable for such annual license tax. The annual license tax shall be due on or before
1080 the last day of December of each year.

1081 D. 1. Each (i) bulk user of alternative fuel or retailer of alternative fuel liable for tax pursuant to
1082 subsection A and (ii) provider of alternative fuel liable for the tax pursuant to subsection B, shall file a
1083 monthly tax return with the Department. The tax on alternative fuel levied by this article, except for the
1084 annual license tax imposed under subsection B of § 58.1-2249, that is required to be remitted to the
1085 Commonwealth shall be payable to the Commonwealth not later than the date on which the return is
1086 due. A return shall be (i) postmarked by the last day of the month succeeding the month for which the
1087 return is due or (ii) received by the Department by the twentieth day of the second month succeeding
1088 the month for which the return is due. However, a monthly return of the tax for the month of May shall
1089 be (i) postmarked by June 25 or (ii) received by the Commissioner by the last business day the
1090 Department is open for business in June.

1091 2. If a tax return due date falls on a Saturday, Sunday, or a state or banking holiday, the return
1092 shall be postmarked or received by the Department by midnight of the next business day the Department
1093 is open for business. This provision shall not apply to a return of the tax for the month of May.

1094 3. A return shall be deemed postmarked if it carries the official cancellation mark of the United
1095 States Postal Service or other postal or delivery service.

1096 4. A return shall be filed with the Commissioner and shall be in the form and contain the
1097 information required by the Commissioner.

1098 § 58.1-2252. Remittance of tax to provider of alternative fuel.

1099 A purchaser of alternative fuel, other than a bulk user of alternative fuel or a retailer of alternative
1100 fuel who is liable for the tax pursuant to subsection A of § 58.1-2251, shall remit the tax due on the fuel
1101 to the provider of the fuel. A bulk user of alternative fuel or retailer of alternative fuel who has posted
1102 a bond in accordance with § 58.1-2246 shall not be required to remit the tax to the provider until the
1103 date the provider is required to pay the tax to the Commonwealth. All tax payments received by a
1104 provider of alternative fuel from a bulk user of alternative fuel or retailer of alternative fuel shall be
1105 held in trust by the provider until the provider remits the tax payments to the Commonwealth, and the

1106 provider shall constitute the trustee for such tax payments. The date by which other purchasers of
 1107 alternative fuel are required to remit tax to a provider shall be determined by agreement between the
 1108 provider and the purchaser.

1109 § 58.1-2253. Notice to providers of alternative fuel of cancellation or reissuance of certain licenses;
 1110 effect of notice.

1111 A. If the Commissioner cancels the license of a bulk user of alternative fuel or retailer of alternative
 1112 fuel who has posted a bond in accordance with § 58.1-2246, the Commissioner shall notify all providers
 1113 of alternative fuel of the cancellation. If the Commissioner issues a license to a bulk user of alternative
 1114 fuel or retailer of alternative fuel whose license was previously canceled, the Commissioner shall notify
 1115 all providers of alternative fuel of the issuance.

1116 B. A provider of alternative fuel who sells alternative fuel to a bulk user of alternative fuel or
 1117 retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246, after receiving notice
 1118 from the Commissioner that the Commissioner has canceled the license of a bulk user of alternative fuel
 1119 or of a retailer of alternative fuel, is jointly and severally liable with the bulk user of alternative fuel or
 1120 retailer of alternative fuel for any tax due on the alternative fuel that the provider of alternative fuel
 1121 sells to the bulk user of alternative fuel or retailer of alternative fuel after receiving the notice;
 1122 however, the provider of alternative fuel shall not be liable for tax due on alternative fuel sold to a
 1123 previously unlicensed bulk user of alternative fuel or retailer of alternative fuel after the provider of
 1124 alternative fuel receives notice from the Commissioner that the Commissioner has issued another license
 1125 to the bulk user of alternative fuel or retailer of alternative fuel.

1126 § 58.1-2254. Exempt sale deduction.

1127 A licensed retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246 may
 1128 deduct from the amount of tax otherwise payable to a provider of alternative fuel the amount calculated
 1129 on alternative fuel that the licensee received from the provider and resold to a governmental entity, or
 1130 resold to an organization described in subdivision 2 of § 58.1-2250 for use in the operation of an
 1131 aircraft, whose purchases of alternative fuel are exempt from the tax under such section if, when
 1132 purchasing the fuel, the retailer notified the provider of the retailer's intent to resell the fuel in an
 1133 exempt sale.

1134 § 58.1-2255. Returns and payments by bulk users and retailers of alternative fuel; storage.

1135 A. Each bulk user of alternative fuel and retailer of alternative fuel shall file a monthly informational
 1136 return with the Commissioner. A monthly return covers a calendar month and is due by the twentieth
 1137 day of the second month that follows such month.

1138 The return shall include the following information and any other information required by the
 1139 Commissioner:

- 1140 1. The amount of alternative fuel received during the quarter;
- 1141 2. The amount of alternative fuel sold or used during the quarter;
- 1142 3. The number of gallons for which a deduction was taken during the quarter pursuant to
 1143 § 58.1-2254, by provider, if applicable; and
- 1144 4. The number of gallons sold in exempt sales during the quarter, by type of sale, and the purchaser
 1145 of the fuel in the exempt sales, if applicable.

1146 B. If the number of gallons for which an eligible retailer of alternative fuel takes a deduction during
 1147 a quarter exceeds the number of exempt gallons or gallon equivalent sold, the retailer of alternative fuel
 1148 shall pay tax on the difference at the rate imposed by subsection A of § 58.1-2249. The tax shall be
 1149 payable when the informational return is due.

1150 C. A bulk user of alternative fuel or a retailer of alternative fuel may store highway and nonhighway
 1151 alternative fuel in separate storage tanks or in the same storage tank. If highway and nonhighway
 1152 alternative fuel are stored in separate storage tanks, the tank for the nonhighway fuel shall be marked
 1153 in accordance with the requirements set by § 58.1-2279 for dyed diesel storage facilities. If highway and
 1154 nonhighway alternative fuel are stored in the same storage tank, the storage tank shall be equipped with
 1155 separate metering devices for the highway fuel and the nonhighway fuel. If the Commissioner determines
 1156 that a bulk user of alternative fuel or retailer of alternative fuel used or sold alternative fuel to operate
 1157 a highway vehicle when the fuel was dispensed from a storage tank or through a meter marked for
 1158 nonhighway use, all fuel delivered into that storage tank shall be presumed to have been used to
 1159 operate a highway vehicle.

1160 § 58.1-2256. Deductions and discounts for providers of alternative fuel filing returns.

1161 A. When a provider of alternative fuel files a return, the provider of alternative fuel may deduct from
 1162 the amount of tax payable with the return the amount of tax any of the following licensees owes the
 1163 provider of alternative fuel but failed to remit to the provider of alternative fuel:

- 1164 1. A licensed bulk user of alternative fuel who has posted a bond in accordance with § 58.1-2246;
 1165 and
- 1166 2. A licensed retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246.

1167 A provider of alternative fuel shall not be liable for tax that such a licensee owes the provider of
 1168 alternative fuel but fails to pay. If such licensee pays the tax owed to a provider of alternative fuel after
 1169 the provider of alternative fuel deducts the amount of such tax on a return, the provider of alternative
 1170 fuel shall remit the payment to the Commissioner with the next monthly return filed subsequent to
 1171 receipt of the tax.

1172 B. A provider of alternative fuel who timely files a return with the payment due may deduct, from the
 1173 amount of tax payable with the return, an administrative discount of one-tenth of one percent of the
 1174 amount of tax payable to this Commonwealth, not to exceed a total of \$5,000 per month. The
 1175 administrative discount allowed a provider of alternative fuel who is also licensed as a supplier under
 1176 Article 2 (§58.1-2204 et seq.) of this chapter shall not exceed \$5,000 per month for both licenses.

1177 § 58.1-2257. Duties of provider of alternative fuel as trustee.

1178 A. All tax payments due to the Commonwealth received by a provider of alternative fuel pursuant to
 1179 § 58.1-2252 shall be held by the provider of alternative fuel as trustee in trust for the Commonwealth,
 1180 and a provider of alternative fuel has a fiduciary duty to remit to the Commissioner the amount of tax
 1181 received by the provider of alternative fuel. A provider of alternative fuel shall be liable for the taxes
 1182 paid to him.

1183 B. A provider of alternative fuel shall notify a bulk user of alternative fuel or retailer of alternative
 1184 fuel who has posted a bond in accordance with § 58.1-2246 and who received alternative fuel from the
 1185 provider of alternative fuel during a reporting period of the number of taxable gallons or equivalent
 1186 taxable gallons received. The provider of alternative fuel shall give this notice after the end of each
 1187 reporting period and before the licensee is required to remit to the provider of alternative fuel the
 1188 amount of tax due on the fuel.

1189 C. A provider of alternative fuel shall notify the Commissioner within ten business days after a
 1190 return is due of any licensed bulk user of alternative fuel or retailer of alternative fuel who (i) has
 1191 posted a bond in accordance with § 58.1-2246 and (ii) did not pay the tax due the provider of
 1192 alternative fuel when the provider filed his return. The notice shall be transmitted to the Commissioner
 1193 in the form required by the Commissioner.

1194 D. A provider of alternative fuel who receives a payment of tax shall not apply the payment to a
 1195 debt that the person making the tax payment owes to the provider of alternative fuel for alternative fuel
 1196 purchased from the provider of alternative fuel.

1197 § 58.1-2258. Use of name and account number on return.

1198 When a transaction with a person licensed under this article is required to be reported on a return,
 1199 the return shall state the licensee's name and account number as stated on the lists compiled by the
 1200 Commissioner under § 58.1-2216.

1201 Article 6.
 1202 Refunds.

1203 § 58.1-2259. Fuel uses eligible for refund.

1204 A. A refund shall be granted in accordance with the provisions of § 58.1-2261 to any person who
 1205 establishes to the satisfaction of the Commissioner that such person has paid the tax levied pursuant to
 1206 this chapter upon any fuel:

- 1207 1. Sold and delivered to a governmental entity for its exclusive use;
- 1208 2. Used by a governmental entity, provided persons operating under contract with a governmental
 1209 entity shall not be eligible for such refund;
- 1210 3. Sold and delivered to an organization described in subdivision 2 of § 58.1-2226 or subdivision 2
 1211 of § 58.1-2250 for its exclusive use in the operation of an aircraft;
- 1212 4. Used by an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250
 1213 for its exclusive use in the operation of an aircraft, provided persons operating under contract with such
 1214 an organization shall not be eligible for such refund;
- 1215 5. Purchased by a licensed exporter and subsequently transported and delivered by such licensed
 1216 exporter to another state for sales or use outside the boundaries of the Commonwealth if the tax
 1217 applicable in the destination state has been paid, provided a refund shall not be granted pursuant to
 1218 this section on any fuel which is transported and delivered outside of the Commonwealth in the fuel
 1219 supply tank of a highway vehicle or an aircraft;
- 1220 6. Used by any person performing transportation under contract or lease with any transportation
 1221 district for use in a highway vehicle controlled by a transportation district created under the
 1222 Transportation District Act of 1964 (§ 15.2-4500 et seq.) and used in providing transit service by the
 1223 transportation district by contract or lease, provided the refund shall be paid to the person performing
 1224 such transportation;
- 1225 7. Used by any private, nonprofit agency on aging, designated by the Department for the Aging,
 1226 providing transportation services to citizens in highway vehicles owned, operated or under contract with
 1227 such agency;
- 1228 8. Used in operating or propelling highway vehicles owned by a nonprofit organization that provides

1229 specialized transportation to various locations for elderly or disabled individuals to secure essential
 1230 services and to participate in community life according to the individual's interest and abilities;

1231 9. Used in operating or propelling buses owned and operated by a county or the school board
 1232 thereof while being used to transport children to and from public school or from school to and from
 1233 educational or athletic activities;

1234 10. Used by buses owned or solely used by a private, nonprofit, nonsectarian school while being
 1235 used to transport children to and from such school or from such school to and from educational or
 1236 athletic activities;

1237 11. Used by any county or city school board or any private, nonprofit, nonsectarian school
 1238 contracting with a private carrier to transport children to and from public schools or any private,
 1239 nonprofit, nonsectarian school, provided the tax shall be refunded to the private carrier performing such
 1240 transportation;

1241 12. Used in operating or propelling the equipment of volunteer firefighting companies and of
 1242 volunteer rescue squads within this Commonwealth used actually and necessarily for firefighting and
 1243 rescue purposes;

1244 13. Used in operating or propelling motor equipment belonging to counties, cities and towns, if
 1245 actually used in public activities;

1246 14. Used for a purpose other than in operating or propelling highway vehicles, watercraft or
 1247 aircraft;

1248 15. Used off-highway in self-propelled equipment manufactured for a specific off-road purpose,
 1249 which is used on a job site and the movement of which on any highway is incidental to the purpose for
 1250 which it was designed and manufactured;

1251 16. Proven to be lost by accident, including the accidental mixing of (i) dyed diesel fuel with
 1252 tax-paid motor fuel, (ii) gasoline with diesel fuel, or (iii) undyed diesel fuel with dyed kerosene, but
 1253 excluding fuel lost through personal negligence or theft;

1254 17. Used in operating or propelling vehicles used solely for racing other vehicles on a race track;

1255 18. Used in operating or propelling unlicensed highway vehicles and other unlicensed equipment
 1256 used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or
 1257 lessee of such vehicles and not operated on or over any highway for any purpose other than to move it
 1258 in the manner and for the purpose mentioned. The amount of refund shall be equal to the amount of the
 1259 taxes paid less one-half cent per gallon on such fuel so used which shall be paid by the Commissioner
 1260 into the state treasury to the credit of the Virginia Agricultural Foundation Fund;

1261 19. Used in operating or propelling commercial watercraft. The amount of refund shall be equal to
 1262 the amount of the taxes paid less one and one-half cents per gallon on such fuel so used which shall be
 1263 paid by the Commissioner into the state treasury to be credited as provided in subsection D of
 1264 § 58.1-2289. If any applicant so requests, the Commissioner shall pay into the state treasury, to the
 1265 credit of the Game Protection Fund, the entire seventeen and one-half cents per gallon tax paid by such
 1266 applicant for the purposes specified in subsection D of § 58.1-2289. If any applicant who is an operator
 1267 of commercial watercraft so requests, the Commissioner shall pay into the state treasury, to the credit of
 1268 the Marine Fishing Improvement Fund, the entire seventeen and one-half cents per gallon tax paid by
 1269 such applicant for the purposes specified in § 28.2-208; or

1270 20. Used in operating stationary engines, or pumping or mixing equipment on a highway vehicle if
 1271 the fuel used to operate such equipment is stored in an auxiliary tank separate from the fuel tank used
 1272 to propel the highway vehicle, and the highway vehicle is mechanically incapable of self-propulsion
 1273 while fuel is being used from the auxiliary tank.

1274 B. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete
 1275 highway vehicle, where the vehicle's equipment is mechanically or hydraulically driven by an internal
 1276 combustion engine that propels the vehicle, is entitled to a refund in an amount equal to thirty-five
 1277 percent of the tax paid on such fuel.

1278 C. Any person purchasing any fuel on which tax imposed pursuant to this chapter has been paid may
 1279 apply for a refund of the tax if such fuel was consumed by a highway vehicle used in operating an
 1280 urban or suburban bus line or a taxicab service. This refund also applies to a common carrier of
 1281 passengers which has been issued a certificate of public convenience and necessity pursuant to
 1282 §§ 58.1-2204 and 46.2-2007 providing regular route service over the highways of the Commonwealth.
 1283 No refund shall be granted unless the majority of the passengers using such bus line, taxicab service or
 1284 common carrier of passengers do so for travel of a distance of not more than forty miles, one way, in a
 1285 single day between their place of abode and their place of employment, shopping areas or schools.

1286 If the applicant for a refund is a taxicab service, he shall hold a valid permit from the Department
 1287 to engage in the business of a taxicab service. No applicant shall be denied a refund by reason of the
 1288 fee arrangement between the holder of the permit and the driver or drivers, if all other conditions of
 1289 this section have been met.

1290 Under no circumstances shall a refund be granted more than once for the same fuel. The amount of
 1291 refund under this subsection shall be equal to the amount of the taxes paid, except refunds granted on
 1292 the tax paid on fuel used by a taxicab service shall be in an amount equal to the tax paid less one cent
 1293 per gallon on the fuel used.

1294 Any refunds made under this subsection shall be deducted from the urban highway funds allocated to
 1295 the highway construction district, pursuant to Article 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title
 1296 33.1, in which the recipient has its principal place of business.

1297 Except as otherwise provided in this chapter, all provisions of law applicable to the refund of fuel
 1298 taxes by the Commissioner generally shall apply to the refunds authorized by this subsection. Any
 1299 county having withdrawn its roads from the secondary system of state highways under provisions of § 11
 1300 Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is now
 1301 provided by law with respect to other fuel tax receipts.

1302 § 58.1-2260. Refund of taxes erroneously or illegally collected.

1303 If it appears to the satisfaction of the Commissioner that any taxes or penalties imposed by this
 1304 chapter have been erroneously or illegally collected from any person, such person shall be entitled to a
 1305 refund upon proper application to the Commissioner. No refund shall be made under the provisions of
 1306 this section unless a written statement, setting forth the circumstances and reasons why such refund is
 1307 claimed, is filed with the Commissioner within one year of the date of payment of the tax for which the
 1308 refund is claimed. The claim shall be in such form as the Commissioner shall prescribe and shall be
 1309 sworn to by the claimant.

1310 § 58.1-2261. Refund procedure; investigations; retail sales and use tax.

1311 A. Any person entitled to a refund pursuant to § 58.1-2259 shall file with the Commissioner an
 1312 application in writing on a form prepared and furnished by the Commissioner, duly signed by the
 1313 applicant, and accompanied by a paid ticket or invoice from the seller showing such purchase. The
 1314 applicant shall set forth the basis for the claimed refund, the total amount of such fuel purchased and
 1315 used by such applicant, and how such fuel was used. The Commissioner, upon the presentation of such
 1316 application and paid ticket, invoice or other document, shall refund to the claimant the proper amount
 1317 of the tax paid as provided in this chapter, subject to the provisions of subsection D. A ticket issued to
 1318 the holder of a credit card as evidence of the delivery to such holder of tax-paid fuel shall, for the
 1319 purpose of this section, be a paid ticket or invoice. Tickets or invoices marked "duplicate" shall not be
 1320 acceptable.

1321 B. The application for a refund shall be filed within one year from the date of the sale as shown on
 1322 the paid ticket or invoice. However, an application for a refund pursuant to subdivision A 5 of
 1323 § 58.1-2259 shall be filed within three years of the date such fuel is transported outside the
 1324 Commonwealth.

1325 C. In the event an assessment is rendered for failure to report and pay the tax imposed as provided
 1326 in § 58.1-2217 or § 58.1-2249 and such fuel is subject to refund under the provisions of § 58.1-2259, the
 1327 application for a refund shall be filed with the Commissioner by the person entitled to such refund
 1328 within one year from the date such assessment is paid and shall be accompanied by invoices covering
 1329 the sale of the fuel and billing of tax to such person.

1330 D. The Department may make any investigation it considers necessary before refunding the fuels tax
 1331 to a person, and may investigate a refund after the refund has been issued and within the time frame for
 1332 adjusting tax under this chapter.

1333 E. In accordance with § 58.1-609.1, any person who is refunded tax pursuant to § 58.1-2259 shall be
 1334 subject to the taxes imposed by Chapter 6 (§ 58.1-600 et seq.) of this title, unless such transaction is
 1335 specifically exempted pursuant to § 58.1-609.1.

1336 § 58.1-2262. Payment of refund.

1337 Whenever it appears to the satisfaction of the Commissioner that any person is entitled to a refund
 1338 for taxes paid pursuant to this chapter, the Commissioner shall forthwith certify the amount of the
 1339 refund to the Comptroller. The amount of the refund shall be paid by check issued by the State
 1340 Treasurer on warrant of the Comptroller.

1341 Article 7.

1342 Enforcement and Administration.

1343 § 58.1-2263. Shipping documents; transportation of motor fuel by barge, watercraft, railroad tank
 1344 car or transport truck; civil penalty.

1345 A. A person shall not transport motor fuel by barge, watercraft, railroad tank car or transport truck
 1346 unless the person has a shipping document for its transportation that complies with this section. A
 1347 terminal operator or operator of a bulk plant shall give a shipping document to the person who
 1348 operates the barge, watercraft, railroad tank car or transport truck into which motor fuel is loaded at
 1349 the terminal rack or bulk plant rack.

1350 B. The shipping document issued by the terminal operator or operator of a bulk plant shall be
 1351 machine-printed and shall contain the following information and any other information required by the

1352 Commissioner:

1353 1. Identification, including address, of the terminal or bulk plant from which the motor fuel was
1354 received;

1355 2. Date the motor fuel was loaded;

1356 3. Gross gallons loaded;

1357 4. Destination state of the motor fuel, as represented by the purchaser of the motor fuel or the
1358 purchaser's agent;

1359 5. In the case of aviation jet fuel sold to an aviation consumer, the shipping document shall be
1360 marked with the phrase "Aviation Jet Fuel, Not for On-road Use" or a similar phrase; and

1361 6. If the document is issued by a terminal operator, (i) net gallons loaded and (ii) tax responsibility
1362 statement indicating the name of the supplier who is responsible for the tax due on the motor fuel.

1363 C. A terminal operator or bulk plant operator may rely on the representation made by the purchaser
1364 of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser
1365 shall be liable for any tax due as a result of the purchaser's diversion of fuel from the represented
1366 destination state.

1367 D. A person to whom a shipping document was issued shall:

1368 1. Carry the shipping document in the means of conveyance for which it was issued when
1369 transporting the motor fuel described;

1370 2. Show the shipping document to a law enforcement officer upon request when transporting the
1371 motor fuel described;

1372 3. Deliver motor fuel described in the shipping document to the destination state printed on it unless
1373 the person:

1374 a. Notifies the Commissioner before transporting the motor fuel into a state other than the printed
1375 destination state that the person has received instructions after the shipping document was issued to
1376 deliver the motor fuel to a different destination state;

1377 b. Receives from the Commissioner a confirmation number authorizing the diversion; and

1378 c. Writes on the shipping document the change in destination state and the confirmation number for
1379 the diversion; and

1380 4. Give a copy of the shipping document to the distributor or other person to whom the motor fuel is
1381 delivered.

1382 E. The person to whom motor fuel is delivered by barge, watercraft, railroad tank car or transport
1383 truck shall not accept delivery of the motor fuel if the destination state shown on the shipping document
1384 for the motor fuel is a state other than Virginia. To determine if the shipping document shows Virginia
1385 as the destination state, the person to whom the fuel is delivered shall examine the shipping document
1386 and keep a copy of the shipping document (i) at the place of business where the motor fuel was
1387 delivered for ninety days following the date of delivery and (ii) at such place or another place for at
1388 least three years following the date of delivery. The person who accepts delivery of motor fuel in
1389 violation of this subsection and any person liable for the tax on the motor fuel pursuant to Article 3
1390 (§ 58.1-2217 et seq.) of this chapter shall be jointly and severally liable for any tax due on the fuel.

1391 F. Any person who (i) transports motor fuel in a barge, watercraft, railroad tank car or transport
1392 truck without a shipping document or with a false or an incomplete shipping document or (ii) delivers
1393 motor fuel to a destination state other than that shown on the shipping document, shall be subject to a
1394 civil penalty. If the fuel is transported in a barge, watercraft, or transport truck, the civil penalty
1395 imposed under this subsection shall be payable by the person in whose name the means of conveyance
1396 is registered. If the fuel is transported in a railroad tank car, the civil penalty imposed under this
1397 subsection shall be payable by the person responsible for the movement of the motor fuel in the railroad
1398 tank car. The amount of the civil penalty assessed against a person for his first violation shall be
1399 \$5,000. The amount of the civil penalty assessed against a person for his second or subsequent violation
1400 shall be \$10,000.

1401 § 58.1-2264. Import confirmation number required; civil penalty.

1402 A. An importer who acquires motor fuel for import from a supplier who is not an elective supplier or
1403 a permissive supplier, and who therefore is not acting as trustee for the remittance of tax to the
1404 Commonwealth on behalf of the importer, shall obtain an import confirmation number from the
1405 Commissioner before importing the motor fuel. The importer shall write the import confirmation number
1406 on the shipping document issued for the fuel. The importer shall obtain a separate import confirmation
1407 number for each such delivery of motor fuel into Virginia.

1408 B. An importer who does not obtain an import confirmation number when required by this section
1409 shall be subject to a civil penalty. The civil penalty shall be payable by the person in whose name the
1410 transport truck is registered. The amount of the civil penalty assessed against a person for his first
1411 violation shall be \$5,000. The amount of the civil penalty assessed against a person for his second or
1412 subsequent violation shall be \$10,000.

- 1413 § 58.1-2265. *Improper sale or use of untaxed fuel; civil penalty.*
- 1414 A. Any person committing any of the following acts shall be subject to the civil penalty specified in
- 1415 subsection B:
- 1416 1. Selling or storing any dyed diesel fuel for use in a highway vehicle that is licensed or required to
- 1417 be licensed, unless that use is allowed under 26 U.S.C. § 4082;
- 1418 2. Willfully altering or attempting to alter the strength or composition of any dye or marker in any
- 1419 dyed diesel fuel;
- 1420 3. Using dyed diesel fuel in a highway vehicle unless that use is allowed under 26 U.S.C. § 4082;
- 1421 4. Acquiring, selling or storing any fuel for use in a watercraft, aircraft, or highway vehicle that is
- 1422 licensed or required to be licensed unless the tax levied by this chapter has been paid; or
- 1423 5. Using any fuel in a watercraft, aircraft, or highway vehicle that is licensed or required to be
- 1424 licensed unless the tax levied by this chapter has been paid.
- 1425 B. The amount of the civil penalty for any act described in subsection A shall be the greater of
- 1426 \$1,000 or ten dollars per gallon of fuel, based on the maximum storage capacity of the storage tank,
- 1427 container or storage tank of the highway vehicle, watercraft or aircraft.
- 1428 C. The Commissioner is authorized to reduce or waive any civil penalties under this section if the
- 1429 violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner.
- 1430 § 58.1-2266. *Late filing or payment; civil penalty.*
- 1431 A. Any licensee committing any of the following acts shall be subject to the civil penalty specified in
- 1432 subsection B:
- 1433 1. Failure to submit a report required by this chapter on a timely basis;
- 1434 2. Failure to submit the data required by this chapter; or
- 1435 3. Failure to pay to the Commissioner or to a trustee on a timely basis the amount of taxes due
- 1436 under this chapter.
- 1437 B. The amount of the civil penalty for any act described in subsection A shall be equal to ten
- 1438 percent of the tax due or fifty dollars, whichever is greater; however, penalties resulting from an audit
- 1439 shall be equal to ten percent of the tax due. After imposition of the penalty, the amount of the tax and
- 1440 the penalty shall bear interest at the rate of one percent per month until the tax and penalty are paid.
- 1441 C. The Commissioner is authorized to reduce or waive any penalties under this section if the
- 1442 violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner.
- 1443 § 58.1-2267. *Refusal to allow inspection or taking of sample; civil penalty.*
- 1444 Any person who refuses to allow an inspection or allow the taking of a fuel sample authorized by §
- 1445 58.1-2276 or § 58.1-2277 shall be subject to a civil penalty of \$5,000 for each refusal. If the refusal is
- 1446 for a sample to be taken from a vehicle, the penalty shall be payable by the person in whose name the
- 1447 vehicle is registered. If the refusal is for a sample to be taken from any other storage tank or container,
- 1448 the penalty shall be payable by the owner of such storage tank or container.
- 1449 § 58.1-2268. *Engaging in business without a license; civil penalty.*
- 1450 Any person who engages in any business activity within the Commonwealth for which a license is
- 1451 required by this chapter without a valid license shall be subject to a civil penalty. The amount of the
- 1452 civil penalty assessed against a person for his first violation shall be \$5,000. The amount of the civil
- 1453 penalty assessed against a person for his second or subsequent violation shall be \$10,000.
- 1454 § 58.1-2268.1. *Preventing a person from obtaining a license; civil penalty.*
- 1455 Any terminal operator, supplier, or position holder in the terminal who, by use of coercion, threat,
- 1456 intimidation or any other means of interference, intentionally prevents any person from applying for and
- 1457 obtaining a license issued under this chapter shall be subject to a civil penalty. The amount of the civil
- 1458 penalty assessed against a person for his (i) first violation shall be \$5,000, and (ii) second and
- 1459 subsequent violations shall be \$10,000.
- 1460 § 58.1-2269. *False or fraudulent return; civil penalty.*
- 1461 Any person liable for a tax levied under this chapter who files a false or fraudulent return with the
- 1462 intent to evade the tax shall be subject to a civil penalty. The amount of the civil penalty shall be equal
- 1463 to fifty percent of the amount of the tax intended to be evaded by the filing of such return. The civil
- 1464 penalty shall be in addition to the amount of the tax intended to be evaded.
- 1465 § 58.1-2270. *Failure to keep or retain records; civil penalty.*
- 1466 Any person who fails to keep or retain records as required by this chapter shall be subject to a civil
- 1467 penalty. The amount of the civil penalty assessed against a person for his first violation shall be \$1,000.
- 1468 The amount of the civil penalty assessed against a person for each subsequent violation shall be \$1,000
- 1469 more than the amount of the civil penalty for the preceding violation.
- 1470 § 58.1-2271. *Payment of civil penalties; disposition.*
- 1471 Any civil penalty assessed pursuant to this chapter shall be payable to the Department, shall be in
- 1472 addition to any other penalty or tax that may be imposed as provided in this chapter, and shall be
- 1473 collectible by the Commissioner in the same manner as if it were part of the tax levied. The amount of
- 1474 any civil penalty imposed under this chapter shall bear interest at the rate of one percent per month

- 1475 *until paid. All civil penalties imposed under this chapter shall be deposited as provided in § 58.1-2289.*
 1476 *§ 58.1-2272. Prohibited acts; criminal penalties.*
 1477 *A. Any person who commits any of the following acts shall be guilty of a Class 1 misdemeanor:*
 1478 *1. Failing to obtain a license required by this chapter;*
 1479 *2. Failing to file a return required by this chapter;*
 1480 *3. Failing to pay a tax when due under this chapter;*
 1481 *4. Failing to pay a tax collected on behalf of a destination state to that state when it is due;*
 1482 *5. Making a false statement in an application, return, ticket, invoice, statement, or any other*
 1483 *document required under this chapter;*
 1484 *6. Making a false statement in an application for a refund;*
 1485 *7. Failing to keep records as required under this chapter;*
 1486 *8. Refusing to allow the Commissioner or a representative of the Commissioner to examine the*
 1487 *person's books and records concerning fuel;*
 1488 *9. Failing to make a required disclosure of the correct amount of fuel sold or used in the*
 1489 *Commonwealth;*
 1490 *10. Failing to file a replacement or additional bond, certificate of deposit, or irrevocable letter of*
 1491 *credit as required under this chapter;*
 1492 *11. Failing to show or give a shipping document as required under this chapter;*
 1493 *12. Refusing to allow a licensed distributor, licensed exporter, or licensed importer to defer payment*
 1494 *of tax to the supplier, as required by § 58.1-2231;*
 1495 *13. Refusing to allow a bulk user of alternative fuel or a retailer of alternative fuel who has posted*
 1496 *a bond in accordance with § 58.1-2246 to defer payment of tax to the provider of alternative fuel, as*
 1497 *required by § 58.1-2252;*
 1498 *14. Refusing to allow a licensed distributor or a licensed importer to take a deduction or discount*
 1499 *allowed by § 58.1-2233 when remitting the tax to the supplier, or to allow a licensed retailer of*
 1500 *alternative fuel to take a deduction or discount allowed by § 58.1-2254 when remitting the tax to the*
 1501 *provider of alternative fuel;*
 1502 *15. Using, delivering, or selling any aviation fuel for use or intended for use in highway vehicles or*
 1503 *watercraft;*
 1504 *16. Violating the provisions of § 58.1-2278;*
 1505 *17. Interfering with or refusing to permit seizures authorized under § 58.1-2274; or*
 1506 *18. Delivering fuel from a transport truck or tank wagon to the fuel tank of a highway vehicle,*
 1507 *except in an emergency.*
 1508 *B. A person who knowingly commits any of the following acts shall be guilty of a Class 1*
 1509 *misdemeanor:*
 1510 *1. Dispenses any fuel on which tax levied pursuant to this chapter has not been paid into the supply*
 1511 *tank of a highway vehicle, watercraft, or aircraft; or*
 1512 *2. Allows any fuel on which tax levied pursuant to this chapter has not been paid to be dispensed*
 1513 *into the supply tank of a highway vehicle, watercraft, or aircraft.*
 1514 *§ 58.1-2273. Willful commission of prohibited acts; criminal penalties.*
 1515 *Any person who willfully commits any of the following acts, with the intent to (i) evade or*
 1516 *circumvent the Commonwealth's fuels tax laws or (ii) assist any other person in efforts to evade or*
 1517 *circumvent such laws, shall be guilty of a Class 6 felony, if he:*
 1518 *1. Alters, manipulates, replaces, or in any other manner tampers or interferes with, or causes to be*
 1519 *altered, manipulated, replaced, tampered or interfered with, a totalizer attached to fuel pumps to*
 1520 *measure the dispensing of fuel;*
 1521 *2. Does not pay fuels taxes and diverts such tax proceeds for other purposes;*
 1522 *3. Is a licensee or the agent or representative of a licensee, converts or attempts to convert fuel tax*
 1523 *proceeds for the use of the licensee or the licensee's agent or representative, with the intent to defraud*
 1524 *the Commonwealth;*
 1525 *4. Illegally collects fuel taxes when not authorized or licensed by the Commissioner to do so;*
 1526 *5. Illegally imports fuel into the Commonwealth;*
 1527 *6. Conspires with any other person or persons to engage in an act, plan, or scheme to defraud the*
 1528 *Commonwealth of fuels tax proceeds;*
 1529 *7. Uses any dyed diesel fuel for a use that the user knows or has reason to know is a taxable use of*
 1530 *the fuel, or sells any dyed diesel fuel to a person who the seller knows or has reason to know will use*
 1531 *the fuel for a taxable purpose; however, if the amount of fuel involved is not more than twenty gallons,*
 1532 *such person shall be guilty of a Class 1 misdemeanor;*
 1533 *8. Alters or attempts to alter the strength or composition of any dye or marker in any dyed diesel*
 1534 *fuel intended to be used for a taxable purpose; or*
 1535 *9. Fails to remit to the Commissioner any tax levied pursuant to this chapter, if he (i) has added, or*

1536 represented that he has added, the tax to the sales price for the fuel and (ii) has collected the amount of
1537 the tax.

1538 § 58.1-2274. Unlawful importing, transportation, delivery, storage or sale of fuel; sale to enforce
1539 assessment.

1540 A. Upon the discovery of any fuel illegally imported into, or illegally transported, delivered, stored
1541 or sold in, the Commonwealth, the Commissioner shall order the tank or other storage receptacle in
1542 which the fuel is located to be seized and locked or sealed until the tax, penalties and interest levied
1543 under this chapter are assessed and paid.

1544 B. If the assessment for such tax is not paid within thirty days, the Commissioner is hereby
1545 authorized, in addition to the other remedies authorized in this chapter, to sell such fuel and use the
1546 proceeds of such sale to satisfy the assessment due, with any funds which exceed the assessment and
1547 costs of the sale being returned to the owner of the fuel.

1548 C. All fuel and any property, tangible or intangible, which may be found upon the person or in any
1549 vehicle which such person is using, including the vehicle itself, to aid the person in the transportation
1550 or sale of illegally transported, delivered, stored, sold, imported or acquired fuel, and any property
1551 found in the immediate vicinity of any place where such illegally transported, delivered, stored, sold,
1552 imported or acquired fuel may be located, including motor vehicles, tanks, and other storage devices,
1553 used to aid in the illegal transportation or sale of such fuel, shall be deemed contraband and shall be
1554 forfeited to the Commonwealth.

1555 D. Any efforts by the Department to effect the forfeiture allowed under the authority of this section
1556 shall be governed by Chapter 22 (§ 19.2-369 et seq.) of Title 19.2, mutatis mutandis. However, such
1557 procedures shall not be applicable to the Department's tax collection powers and the use of such powers
1558 to enforce a tax liability against the illegally transported, delivered, stored, sold, imported or acquired
1559 fuel.

1560 § 58.1-2275. Record-keeping requirements.

1561 Each (i) person required or electing to be licensed under Article 2 (§ 58.1-2204 et seq.) of this
1562 chapter, (ii) distributor and bulk user not licensed under this chapter, and (iii) person required to be
1563 licensed under § 58.1-2244, shall keep and maintain all records pertaining to fuel received, produced,
1564 manufactured, refined, compounded, used, sold or delivered, together with delivery tickets, invoices, bills
1565 of lading, and such other pertinent records and papers as may be required by the Commissioner for the
1566 reasonable administration of this chapter. Such records shall be kept and maintained for a period to
1567 include the Department's current fiscal year and the previous three fiscal years.

1568 § 58.1-2276. Inspection of records.

1569 A. The Commissioner or any deputy, employee or agent authorized by the Commissioner may
1570 examine, during the usual business hours of the day, records, books, papers, storage tanks and any
1571 other equipment of any person required to maintain records as provided in § 58.1-2275 for the purpose
1572 of ascertaining the quantity of fuel received, produced, manufactured, refined, compounded, used, sold,
1573 shipped, or delivered, to verify the truth and accuracy of any statement, report or return or to ascertain
1574 whether or not the tax levied by this chapter has been paid.

1575 B. If a person required to maintain records as provided in § 58.1-2275 is open for business during
1576 hours of the day which might not be considered usual business hours for the Department, the
1577 Commissioner may examine the person's books and records during the person's normal business hours,
1578 which shall be those hours when the person is open for business at any of the person's places of
1579 business. If the person does not maintain such books and records on the premises, the Commissioner or
1580 any deputy, employee or agent authorized by the Commissioner may inspect such books and records
1581 where they are maintained, irrespective of the working hours at such location, as long as one of the
1582 person's places of business maintains hours at the time of day during which the Commissioner asserts
1583 such inspection powers.

1584 § 58.1-2277. Administrative authority.

1585 A. Employees of the Department designated by the Commissioner, upon presenting appropriate
1586 credentials and a written notice to the owner, operator, or agent in charge, are authorized to enter any
1587 place and to conduct inspections in accordance with this section. Inspections shall be performed in a
1588 reasonable manner and at times that are reasonable under the circumstances, taking into consideration
1589 the normal business hours of the place to be inspected.

1590 B. Inspections may be conducted at any place where taxable fuel or fuel dyes or markers are, or
1591 may be, produced, altered, or stored, or at any inspection site where evidence of production, alteration,
1592 or storage may be discovered. These places may include, but shall not be limited to any: (i) terminal,
1593 (ii) fuel storage facility that is not a terminal, (iii) retail fuel facility, and (iv) designated inspection site.

1594 C. Employees of the Department designated by the Commissioner may physically inspect, examine,
1595 and otherwise search any tank, reservoir, or other container that can or may be used for the
1596 production, storage, or transportation of fuel, fuel dyes or markers. Inspection may also be made of any
1597 equipment used for, or in connection with, the production, storage, or transportation of fuel, fuel dyes

1598 or markers, including equipment used for the dyeing or marking of fuel. Such employees may also
1599 inspect the books and records kept to determine fuel tax liability under this chapter.

1600 D. Employees of the Department designated by the Commissioner may, on the premises or at a
1601 designated inspection site, take and remove samples of fuel in such reasonable quantities as are
1602 necessary to determine its composition.

1603 § 58.1-2278. Equipment requirements.

1604 A. All fuel dispensed at retail shall be dispensed from metered pumps that indicate the total amount
1605 of fuel measured through the pumps. Each pump shall be marked to indicate the type of fuel dispensed.

1606 B. A highway vehicle that transports fuel in a tank that is separate from the fuel supply tank of the
1607 vehicle shall not have a connection from the transporting tank to the motor or to the supply tank of the
1608 vehicle.

1609 § 58.1-2279. Marking requirements for dyed diesel fuel storage facilities.

1610 A. A person who is a retailer of dyed diesel fuel or who stores dyed diesel fuel for use by that
1611 person or another person shall mark, with the phrase "Dyed Diesel Fuel, Non-taxable Use Only, Penalty
1612 for Taxable Use," or a similar phrase that clearly indicates that the diesel fuel is not to be used to
1613 operate a highway vehicle, each storage facility or pump from which dyed diesel fuel is dispensed, as
1614 follows:

1615 1. The storage tank of the storage facility, if the storage tank is visible; and

1616 2. The dispensing device that serves the storage facility.

1617 B. The marking requirements of this section shall not apply to a storage facility that contains fuel
1618 used only in a heating, crop-drying, or manufacturing process, and is installed in a manner that makes
1619 use of the fuel for any other purpose improbable.

1620 Article 8.

1621 Assessments and Collections.

1622 § 58.1-2280. Estimates of fuel subject to tax; assessments; notice of assessment.

1623 When any licensee neglects, fails or refuses to make and file any report as required by this chapter
1624 or files an incorrect or fraudulent report, the Commissioner shall determine, from any information
1625 obtainable, the number of gallons of fuel with respect to which the licensee has incurred liability under
1626 this chapter. The Commissioner is authorized to make an assessment for the tax and any penalty and
1627 interest properly due against such licensee. The notice of assessment shall be sent to the licensee by
1628 registered or certified mail or delivered by the Department to the last known address appearing in the
1629 Commissioner's files. Such notice, when sent or delivered in accordance with these requirements, shall
1630 be sufficient regardless of whether or not it was ever received.

1631 § 58.1-2281. Application to Commissioner for correction.

1632 A. Any person assessed with any tax administered by the Department may, within thirty days from
1633 the date of such assessment, apply for relief to the Commissioner. Such application shall be in the form
1634 prescribed by the Department, and shall fully set forth the grounds upon which the taxpayer relies and
1635 all facts relevant to the taxpayer's contention. The Commissioner may also require such additional
1636 information, testimony or documentary evidence as he deems necessary to a fair determination of the
1637 application.

1638 B. On receipt of a written notice of intent to file under this section, the Commissioner shall refrain
1639 from collecting the tax until the time for filing hereunder has expired, unless he determines that
1640 collection is in jeopardy.

1641 § 58.1-2282. Appeal of Commissioner's decisions.

1642 A. Any person against whom an assessment, order or decision of the Commissioner has been
1643 adversely rendered, which assessment, order, or decision relates to the collection of unreported,
1644 incorrectly or fraudulently reported taxes, the granting or canceling of a license, the filing of a bond, an
1645 increase in the amount of a bond, a change of surety on a bond, the filing of reports, the examination
1646 of records, or any other matter wherein the findings are in the discretion of the Commissioner, may,
1647 within thirty days from the date thereof, file a petition of appeal from such assessment, order, or
1648 decision, in the circuit court in the city or county wherein such person resides, provided that any
1649 petition for a refund for taxes timely paid shall be filed within one year of the date of payment. A copy
1650 of the petition shall be sent to the Commissioner at the time of the filing with the court. The original
1651 shall show, by certificate, the date of mailing such copy to the Commissioner.

1652 B. In any proceeding under this section, the assessments by the Commissioner shall be presumed
1653 correct. The burden of proof shall be upon the petitioner to show that the assessment was incorrect and
1654 contrary to law. The circuit court is authorized to enter judgment against such person for the taxes,
1655 penalty, and interest due. The failure by any such person to appeal under the provisions of this section
1656 within the time period specified shall render the assessment, order, or decision of the Commissioner
1657 conclusively valid and binding upon such person. Such person or the Commissioner may petition the
1658 Court of Appeals from the final decision of the circuit court.

1659 § 58.1-2283. *Jeopardy assessment.*

1660 *If the Commissioner is of the opinion that the collection of any tax or any amount of tax required to*
 1661 *be collected and paid under this chapter will be jeopardized by delay, the Commissioner shall make an*
 1662 *assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such*
 1663 *assessment to the taxpayer with a demand for immediate payment of the tax or of the deficiency in tax*
 1664 *declared to be in jeopardy, including penalties and interest. In the case of a tax for a current period,*
 1665 *the Commissioner may declare the taxable period of the taxpayer immediately terminated and shall mail*
 1666 *or issue the notice of such finding and declaration to the taxpayer with a demand for immediate*
 1667 *payment of the tax based on the period declared terminated, and such tax shall be immediately due and*
 1668 *payable, whether or not the time otherwise allowed by law for filing a return and paying the tax has*
 1669 *expired. Assessments provided for in this section shall become immediately due and payable. If any such*
 1670 *tax, penalty or interest is not paid upon demand, the Commissioner may proceed to (i) collect the same*
 1671 *by legal process, including but not limited to filing a memorandum of lien pursuant to § 58.1-2284, or*
 1672 *(ii) accept a surety bond or other security deemed to sufficiently ensure full payment of the amount of*
 1673 *tax, penalty and interest assessed against the taxpayer.*

1674 § 58.1-2284. *Memorandum of lien for collection of taxes.*

1675 *A. If any taxes or fees, including penalties and interest, due under this chapter become delinquent or*
 1676 *are past due, the Commissioner may file a memorandum of lien in the circuit court clerk's office of the*
 1677 *county or city in which the taxpayer's place of business is located, or in which the taxpayer resides. If*
 1678 *the taxpayer has no place of business or residence within the Commonwealth, such memorandum may*
 1679 *be filed in the Circuit Court of the City of Richmond. A copy of such memorandum may also be filed in*
 1680 *the clerk's office of all counties and cities in which the taxpayer owns real estate. Such memorandum*
 1681 *shall be recorded in the judgment docket book and shall have the effect of a judgment in favor of the*
 1682 *Commonwealth, to be enforced as provided in Article 19 (§ 8.01-196 et seq.) of Chapter 3 of Title 8.01,*
 1683 *mutatis mutandis, except that a writ of fieri facias may be issued any time after the memorandum is*
 1684 *filed. The lien on real estate shall become effective at the time the memorandum is filed in the*
 1685 *jurisdiction in which the real estate is located.*

1686 *B. Recordation of a memorandum of lien hereunder shall not affect the right to a refund or*
 1687 *exoneration under this chapter nor shall an application for correction pursuant to § 58.1-2281 affect the*
 1688 *power of the Commissioner to collect the tax, except as specifically provided in this chapter.*

1689 § 58.1-2285. *Period of limitations.*

1690 *The taxes imposed by this chapter shall be assessed within three years from the date on which such*
 1691 *taxes became due and payable. In the case of a false or fraudulent return with intent to evade payment*
 1692 *of the taxes imposed by this chapter, or a failure to file a return, the taxes may be assessed, or a*
 1693 *proceeding in court for the collection of such taxes may be begun without assessment, at any time. The*
 1694 *Commissioner shall not examine any person's records beyond the three-year period of limitations unless*
 1695 *he has reasonable evidence of fraud, or reasonable cause to believe that such person was required by*
 1696 *law to file a return and failed to do so.*

1697 § 58.1-2286. *Waiver of time limitation on assessment of taxes.*

1698 *If, before the expiration of the time prescribed for assessment of any tax levied pursuant to this title*
 1699 *and assessable by the Department, both the Commissioner and the taxpayer have consented in writing to*
 1700 *its assessment after such time, the tax may be assessed any time prior to the expiration of the period*
 1701 *agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made*
 1702 *before the expiration of the period previously agreed upon.*

1703 § 58.1-2287. *Suits to recover taxes.*

1704 *If any person fails to pay the tax or any civil penalty levied under this chapter, including accrued*
 1705 *penalties and interest, when due, the Attorney General or the Commissioner may bring an appropriate*
 1706 *action for the recovery of such tax, penalty and interest, provided that if it is found that such failure to*
 1707 *pay was willful, judgment shall be rendered for double the amount of the tax or civil penalty found to*
 1708 *be due, with costs.*

1709 § 58.1-2288. *Liability of corporate or partnership officer; penalty.*

1710 *Any corporate or partnership officer who directs or causes the business of which he is a corporate*
 1711 *or partnership officer to fail to pay, collect, or truthfully account for and pay over any fuels tax for*
 1712 *which the business is liable to the Commonwealth or to a trustee, shall, in addition to other penalties*
 1713 *provided by law, be liable for a penalty in the amount of the tax evaded, or not paid, collected, or*
 1714 *accounted for and paid over. The penalty shall be assessed and collected in the same manner as such*
 1715 *taxes are assessed and collected. However, this penalty shall be dischargeable in bankruptcy*
 1716 *proceedings.*

1717 *Article 9.*

1718 *Disposition of Tax Revenues.*

1719 § 58.1-2289. *Disposition of tax revenue generally.*

1720 *A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by*

1721 the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall
 1722 be promptly paid into the state treasury and shall constitute special funds within the Commonwealth
 1723 Transportation Fund. Any balances remaining in these funds at the end of the year shall be available
 1724 for use in subsequent years for the purposes set forth in this chapter, and any interest income on such
 1725 funds shall accrue to these funds. Except as provided in § 33.1-23.03:1, no portion of the revenue
 1726 derived from taxes collected pursuant to § 58.1-2217, § 58.1-2249, or § 58.1-2701, and remaining after
 1727 authorized refunds for nonhighway use of fuel, shall be used for any purpose other than the
 1728 construction, reconstruction or maintenance of the roads and projects comprising the State Highway
 1729 System, the Interstate System and the secondary system of state highways and expenditures directly and
 1730 necessarily required for such purposes, including the retirement of revenue bonds.

1731 Revenues collected under this chapter may be also used for (i) contributions toward the construction,
 1732 reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law
 1733 and (ii) expenditures for the operation and maintenance of the Department of Transportation, the
 1734 Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority,
 1735 and the Department of Motor Vehicles as may be provided by law.

1736 The Governor is hereby authorized to transfer out of such fund an amount necessary for the
 1737 inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection
 1738 and analysis of gasoline for purity.

1739 B. The tax collected on each gallon of aviation fuel sold and delivered or used in this
 1740 Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this
 1741 special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the
 1742 Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the
 1743 laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of
 1744 airports and landing fields to which the public now has or which it is proposed shall have access, and
 1745 for the promotion of aviation in the interest of operators and the public generally.

1746 C. One-half cent of the tax collected on each gallon of fuel on which the refund has been paid at the
 1747 rate of seventeen cents per gallon, or in the case of diesel fuel fifteen and one-half cents per gallon, for
 1748 fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a
 1749 special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed
 1750 to make certain refunds and defray the costs of the research and educational phases of the agricultural
 1751 program, including supplemental salary payments to certain employees at the Virginia Polytechnic
 1752 Institute and State University, the State Department of Agriculture and Consumer Services and the
 1753 Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia
 1754 Agricultural Council.

1755 D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial
 1756 watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund
 1757 of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for
 1758 the purposes provided generally in subsection C of § 29.1-701, including acquisition, construction,
 1759 improvement and maintenance of public boating access areas on the public waters of this
 1760 Commonwealth and for other activities and purposes of direct benefit and interest to the boating public
 1761 and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial
 1762 fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to
 1763 be used for the construction, repair, improvement and maintenance of the public docks of this
 1764 Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction,
 1765 improvement and maintenance of the public docks shall be made according to a plan developed by the
 1766 Virginia Marine Resources Commission.

1767 From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for
 1768 the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state
 1769 treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board,
 1770 the State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public
 1771 docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters,
 1772 (iii) make environmental improvements including, without limitation, fisheries management and habitat
 1773 enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § 33.1-223,
 1774 a sum as established by the General Assembly.

1775 E. Notwithstanding other provisions of this section, there shall be transferred from moneys collected
 1776 pursuant to this section to a special fund within the Commonwealth Transportation Fund in the state
 1777 treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, an amount
 1778 equal to one percent of a sum to be calculated as follows: the tax revenues collected pursuant to this
 1779 chapter, at the tax rates in effect on December 31, 1986, less refunds authorized by this chapter and
 1780 less taxes collected for aviation fuels.

1781

Floorstocks Tax.

1782

1783 § 58.1-2290. *Floorstocks tax.*

1784 A. There is hereby levied a floorstocks tax on taxable motor fuel and alternative fuel held in storage
 1785 as of the close of the business day preceding January 1, 2001. For the purposes of this section, "close
 1786 of the business day" means the time at which the last transaction has occurred for that day. The
 1787 floorstocks tax shall be payable by the person in possession of the fuel on January 1, 2001. The amount
 1788 of the floorstocks tax on motor fuel shall be equal to the sum of (i) the tax rate specified by § 58.1-2217
 1789 for the type of fuel and (ii) the storage tank fee rate specified under § 62.1-44:34:13, multiplied by the
 1790 gallons in storage as of the close of the business day preceding January 1, 2001. The amount of the
 1791 floorstocks tax on alternative fuel shall be equal to the tax rate specified by subsection A of
 1792 § 58.1-2249, multiplied by the gallons in storage as of the close of the business day preceding January
 1793 1, 2001.

1794 B. Persons in possession of taxable fuel in storage as of the close of the business day preceding
 1795 January 1, 2001, shall:

1796 1. Take an inventory at the close of the business day preceding January 1, 2001, to determine the
 1797 gallons in storage for purposes of determining the floorstocks tax;

1798 2. Report the gallons listed in subsection A, on forms provided by the Commissioner, not later than
 1799 February 1, 2001; and

1800 3. Remit the tax levied under this section no later July 1, 2001.

1801 In the event the tax due is paid to the Department on or before February 1, 2001, the person
 1802 remitting the tax may deduct from their submission ten percent of the tax liability due.

1803 C. In determining the amount of floorstocks tax due under this section, the person may exclude the
 1804 amount of taxable motor fuel in dead storage. "Dead storage" means the amount of taxable motor fuel
 1805 that will not be pumped out of a storage tank because the fuel is below the mouth of the draw pipe.
 1806 Such person may assume that the amount of motor fuel in dead storage is 200 gallons for a tank with a
 1807 capacity of less than 10,000 gallons and 400 gallons for a tank with a capacity of 10,000 gallons or
 1808 more. Alternatively, the amount of motor fuel in dead storage in a tank may be computed by using the
 1809 manufacturer's conversion table for the tank and number of inches between the bottom of the tank and
 1810 the mouth of the draw pipe. If the conversion table method is used to compute the amount of motor fuel
 1811 in dead storage, the distance between the bottom of the tank and the mouth of the draw pipe will be
 1812 assumed to be six inches, unless otherwise established.

1813 § 58.1-2701. Amount of tax.

1814 Every motor carrier of ~~property~~ shall pay a road tax equivalent to nineteen and one-half cents per
 1815 gallon calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as
 1816 liquids at a temperature of sixty degrees ~~F~~-*Fahrenheit* and a pressure of 14.7 pounds per square inch
 1817 absolute), used in its operations within the Commonwealth.

1818 The tax imposed by this chapter shall be in addition to all other taxes of whatever character imposed
 1819 on a motor carrier by any other provision of law.

1820 All taxes and fees paid under the provisions of this chapter shall be credited to the Highway
 1821 Maintenance and Operating Fund, a special fund within the Commonwealth Transportation Fund.

1822 § 58.1-2702. Exemptions and exceptions.

1823 The provisions of this chapter shall not apply to a person, firm or corporation owning or operating:

1824 1. ~~A single recreational~~ *Recreational vehicles, as defined in the provisions of the International Fuel*
 1825 *Tax Agreement (IFTA);*

1826 2. The first two Virginia-licensed trucks and tractor trucks, if used exclusively for farm use as
 1827 defined in § 46.2-698 and if not licensed in any other state;

1828 3. Qualified highway vehicles of a licensed highway vehicle dealer when operated without
 1829 compensation for purposes incident to a sale or for demonstration; or

1830 4. Any highway vehicle owned and operated by the United States, the District of Columbia, the
 1831 Commonwealth of Virginia or any municipality or any other political subdivision of the Commonwealth,
 1832 or any other state.

1833 § 62.1-44.34:13. Levy of fee for Fund maintenance.

1834 A. In order to generate revenue for the Fund and to make the Fund available to owners and operators
 1835 of underground storage tanks and to owners and operators of aboveground storage tanks, there shall be
 1836 imposed a fee of one-fifth of one cent on each gallon of the following fuels sold and delivered or used
 1837 in the Commonwealth: ~~motor fuel; aviation motor fuel; diesel fuel; dyed diesel fuel and heating oil~~
 1838 *gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil, as such*
 1839 *terms are defined in § 58.1-2101, except:*

1840 ~~1. Motor fuel, diesel fuel, dyed diesel fuel or heating oil;~~ *58.1-2201; however, such fee shall not be*
 1841 *imposed on (i) gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and*
 1842 *heating oil sold and delivered to the United States or its departments, agencies and instrumentalities*
 1843 *thereof;*

1844 2. Motor fuel sold to a duly licensed dealer; or
1845 3. Diesel fuel, dyed diesel fuel or heating oil sold to a licensed supplier.
1846 Any dealer or supplier, as defined in § 58.1-2101, or any other person licensed with the Department
1847 of Motor Vehicles to sell such fuels in the Commonwealth, who collects the fee imposed by this article
1848 shall be liable for payment thereof to the Department of Motor Vehicles for the exclusive use by the
1849 United States or its departments, agencies and instrumentalities,
1850 (ii) alternative fuel as defined in § 58.1-2201, or (iii) aviation jet fuel as defined in § 58.1-2201.
1851 B. The fee shall be remitted to the Department of Motor Vehicles in the same manner and subject to
1852 the same provisions specified in Article 4 (~~§ 58.1-2128 et seq.~~) of Chapter 2122 (*§ 58.1-2200 et seq.*) of
1853 Title 58.1, except §§ ~~58.1-2129~~ 58.1-2226, 58.1-2233, 58.1-2236, 58.1-2238, and 58.1-2259 shall not
1854 apply.
1855 C. Any person who purchases ~~motor fuel, aviation motor fuel, diesel fuel, gasoline, aviation~~
1856 *gasoline, diesel fuel (including dyed diesel fuel), blended fuel*, or heating oil upon which the fee
1857 imposed by this article has been paid shall be entitled to a refund for the amount of the fee paid if such
1858 person subsequently transports and delivers such fuel to another state, district or country for sale or use
1859 outside the Commonwealth. The application for refund shall be accompanied by a paid ticket or invoice
1860 covering the sales of such fuel and shall be filed with the Commissioner of the Department of Motor
1861 Vehicles within one year of the date of payment of the fee for which the refund is claimed. A refund
1862 shall not be granted pursuant to this article on any fuel which is transported and delivered outside the
1863 Commonwealth in the fuel supply tank of a highway vehicle or aircraft.
1864 D. To maintain the Fund at an appropriate operating level, the Commissioner of the Department of
1865 Motor Vehicles shall increase the fee to three-fifths of one cent when notified by the Comptroller that
1866 the Fund has been or is likely in the near future to be reduced below three million dollars, exclusive of
1867 fees collected pursuant to § 62.1-44.34:21, and he shall reinstitute the one-fifth of one cent fee when the
1868 Comptroller notifies him that the Fund has been restored to twelve million dollars exclusive of fees
1869 collected pursuant to § 62.1-44.34:21.
1870 E. The Comptroller shall report to the Commissioner quarterly regarding the Fund expenditures and
1871 Fund total for the preceding quarter.
1872 F. Revenues from such fees, less refunds and administrative expenses, shall be deposited in the Fund
1873 and used for the purposes set forth in this article.
1874 **2. That the regulations of the Department of Motor Vehicles in effect on the effective date of this**
1875 **act shall continue in effect to the extent they are not in conflict with this act and shall be deemed**
1876 **to be regulations promulgated under this act.**
1877 **3. That, effective January 1, 2001, Chapter 21 (§§ 58.1-2100 through 58.1-2147) of Title 58.1 of the**
1878 **Code of Virginia is repealed.**
1879 **4. That the provisions of this act shall become effective on January 1, 2001.**

HOUSE
SUBSTITUTE

HB1275H2