

# VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

## CHAPTER 167

*An Act to amend and reenact §§ 58.1-2259, 58.1-2263, and 58.1-2276 of the Code of Virginia, relating to fuels tax.*

[H 1657]

Approved March 13, 2001

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

**1. That §§ 58.1-2259, 58.1-2263, and 58.1-2276 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-2259. Fuel uses eligible for refund.

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

1. Sold and delivered to a governmental entity for its exclusive use;
2. Used by a governmental entity, provided persons operating under contract with a governmental entity shall not be eligible for such refund;
3. Sold and delivered to an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250 for its exclusive use in the operation of an aircraft;
4. Used by an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250 for its exclusive use in the operation of an aircraft, provided persons operating under contract with such an organization shall not be eligible for such refund;
5. Purchased by a licensed exporter and subsequently transported and delivered by such licensed exporter to another state for sales or use outside the boundaries of the Commonwealth if the tax applicable in the destination state has been paid, provided a refund shall not be granted pursuant to this section on any fuel which is transported and delivered outside of the Commonwealth in the fuel supply tank of a highway vehicle or an aircraft;
6. Used by any person performing transportation under contract or lease with any transportation district for use in a highway vehicle controlled by a transportation district created under the Transportation District Act of 1964 (§ 15.2-4500 et seq.) and used in providing transit service by the transportation district by contract or lease, provided the refund shall be paid to the person performing such transportation;
7. Used by any private, nonprofit agency on aging, designated by the Department for the Aging, providing transportation services to citizens in highway vehicles owned, operated or under contract with such agency;
8. Used in operating or propelling highway vehicles owned by a nonprofit organization that provides specialized transportation to various locations for elderly or disabled individuals to secure essential services and to participate in community life according to the individual's interest and abilities;
9. Used in operating or propelling buses owned and operated by a county or the school board thereof while being used to transport children to and from public school or from school to and from educational or athletic activities;
10. Used by buses owned or solely used by a private, nonprofit, nonsectarian school while being used to transport children to and from such school or from such school to and from educational or athletic activities;
11. Used by any county or city school board or any private, nonprofit, nonsectarian school contracting with a private carrier to transport children to and from public schools or any private, nonprofit, nonsectarian school, provided the tax shall be refunded to the private carrier performing such transportation;
12. Used in operating or propelling the equipment of volunteer firefighting companies and of volunteer rescue squads within this Commonwealth used actually and necessarily for firefighting and rescue purposes;
13. Used in operating or propelling motor equipment belonging to counties, cities and towns, if actually used in public activities;
14. Used for a purpose other than in operating or propelling highway vehicles, watercraft or aircraft;
15. Used off-highway in self-propelled equipment manufactured for a specific off-road purpose, which is used on a job site and the movement of which on any highway is incidental to the purpose for which it was designed and manufactured;
16. Proven to be lost by accident, including the accidental mixing of (i) dyed diesel fuel with tax-paid motor fuel, (ii) gasoline with diesel fuel, or (iii) undyed diesel fuel with dyed kerosene, but excluding fuel lost through personal negligence or theft;

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

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

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

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

21. *Used in operating or propelling recreational and pleasure watercraft.*

B. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete highway vehicle, or a bulk feed delivery truck, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to thirty-five percent of the tax paid on such fuel. For purposes of this section, a "bulk feed delivery truck" means bulk animal feed delivery trucks utilizing power take-off (PTO) driven auger or air feed discharge systems for off-road deliveries of animal feed.

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

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

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

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

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

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

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

B. The shipping document issued by the terminal operator ~~or operator of a bulk plant~~ shall be machine-printed *and that issued by the operator of a bulk plant shall be on a printed form* and both shall contain the following information and any other information required by the Commissioner:

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

2. Date the motor fuel was loaded;
3. Gross gallons loaded;
4. Destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent;

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

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

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

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

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

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

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

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

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

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

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

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

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

#### § 58.1-2276. Inspection of records.

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

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

**2. That the provisions of this act shall be effective retroactively to January 1, 2001.**