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HOUSE BILL NO. 1657

Offered January 10, 2001

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A BILL to amend and reenact §§ 58.1-2263, 58.1-2276 and 58.1-2282 of the Code of Virginia, relating to fuels tax.

Patron—Parrish

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2263, 58.1-2276 and 58.1-2282 of the Code of Virginia are amended and reenacted as follows:

§ 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

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59 violation of this subsection and any person liable for the tax on the motor fuel pursuant to Article 3
60 (§ 58.1-2217 et seq.) of this chapter shall be jointly and severally liable for any tax due on the fuel.

61 F. Any person who (i) transports motor fuel in a barge, watercraft, railroad tank car or transport
62 truck without a shipping document or with a false or an incomplete shipping document or (ii) delivers
63 motor fuel to a destination state other than that shown on the shipping document, shall be subject to a
64 civil penalty. If the fuel is transported in a barge, watercraft, or transport truck, the civil penalty
65 imposed under this subsection shall be payable by the person in whose name the means of conveyance
66 is registered. If the fuel is transported in a railroad tank car, the civil penalty imposed under this
67 subsection shall be payable by the person responsible for the movement of the motor fuel in the railroad
68 tank car. The amount of the civil penalty assessed against a person for his first violation shall be \$5,000.
69 The amount of the civil penalty assessed against a person for his second or subsequent violation shall be
70 \$10,000.

71 § 58.1-2276. Inspection of records.

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

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

87 § 58.1-2282. Appeal of Commissioner's decisions.

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

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