VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 58.1-2201, 58.1-2208, 58.1-2230, 58.1-2232, 58.1-2251, 58.1-2255, and 58.1-2275 of the Code of Virginia, relating to motor fuels tax.

[H 188]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2201, 58.1-2208, 58.1-2230, 58.1-2232, 58.1-2251, 58.1-2255, and 58.1-2275 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2201. Definitions.

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

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

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

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

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

"Aviation gasoline" means fuel designed for use in the operation of aircraft other than jet aircraft, and sold or used for that purpose.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Destination state" means the state, territory, or foreign country to which motor fuel is directed for

delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use. The term shall not include a tribal reservation of any recognized Native American tribe.

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

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

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

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

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

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

"Exporter" means a person who obtains motor fuel in Virginia for sale or distribution in another state, territory, or foreign country.

"Fuel" includes motor fuel and alternative fuel.

"Fuel alcohol" means methanol or fuel grade ethanol.

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

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

"Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have an American Society for Testing Materials octane number of less than seventy-five as determined by the motor method; (ii) a petroleum product component of gasoline, such as naptha, reformate, or toluene; (iii) gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an aircraft engine.

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

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

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

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

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

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

"Importer" means a person who obtains motor fuel outside of Virginia and brings that motor fuel into Virginia by any means of conveyance other than in the fuel tank of a highway vehicle. For purposes of this chapter, a motor fuel transporter shall not be considered an importer.

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

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

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

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

"Motor fuel transporter" means a person who transports motor fuel ~~outside the terminal transfer system~~ *for-hire* by means of a *tank wagon,* transport truck, a railroad tank car, or a marine vessel.

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

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

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

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

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

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

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

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

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

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

"Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or other means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

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

"Retailer of alternative fuel" means a person who (i) maintains storage facilities for alternative fuel and (ii) sells ~~the fuel at retail~~ or dispenses the fuel at ~~a~~ retail ~~location~~, *to be used to generate power to operate a highway vehicle*.

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

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

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

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

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

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

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

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

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

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

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

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

"Watercraft" means any vehicle used on waterways.

§ 58.1-2208. License application procedure.

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

B. An applicant for a license as a *motor fuel transporter,* supplier, terminal operator, importer, blender, bulk user of undyed diesel fuel, retailer of undyed diesel fuel, distributor, or aviation consumer shall satisfy the following requirements:

1. If the applicant is a corporation, the applicant shall either be incorporated in the Commonwealth or authorized to transact business in the Commonwealth;

2. If the applicant is a limited liability company, the applicant shall be organized in the Commonwealth or authorized to transact business in the Commonwealth;

3. If the applicant is a limited liability partnership, the applicant shall either be formed in the Commonwealth or authorized to transact business in the Commonwealth; or

4. If the applicant is an individual or a general partnership, the applicant shall designate an agent for service of process and provide the agent's name and address.

C. An applicant for a license as a supplier, terminal operator, blender, or permissive supplier shall have a federal certificate of registry issued under 26 U.S.C. § 4101 that authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant who is required to have a federal certificate of registry shall include the registration number of the certificate on the application for a license under this section. An applicant for a license as an importer, an exporter, or a distributor who has a federal certificate of registry issued under 26 U.S.C. § 4101 shall include the registration number of the certificate on the application for a license under this section.

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

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

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

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

B. Returns and payments shall be (i) postmarked ~~by~~ *on or before* the fifteenth day of the second month succeeding the month for which the return ~~is~~ *and payment are* due or (ii) received by the Department by the twentieth day of the second month succeeding the month for which the return ~~is~~ *and*

payment are due. However, a monthly return of the tax for the month of May shall be (i) postmarked by June 25 or (ii) received by the Commissioner by the last business day the Department is open for business in June.

If a tax return *and payment* due date falls on a Saturday, Sunday, or a state or banking holiday, the return shall be postmarked *on or before the fifteenth day of the second month succeeding the month for which the return and payment are due* or received by the Department by midnight of the next business day the Department is open for business. This provision shall not apply to a return of the tax for the month of May.

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

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

1. A refiner;
2. A terminal operator;
3. A supplier;
4. A distributor;
5. An importer to include a bonded importer;
6. A blender;
7. An aviation consumer;
8. A person incurring liability under § 58.1-2225 for the backup tax on motor fuel; and
9. An elective supplier.

D. Notwithstanding the provisions of any other section in this chapter, the Commissioner may require all or certain licensees to file tax returns and payments electronically.

§ 58.1-2232. Notice of cancellation or reissuance of licenses; effect of notice.

A. If the Commissioner cancels the license of a distributor, importer, or aviation consumer, the Commissioner shall notify all suppliers of the cancellation. If the Commissioner issues a license to a distributor, importer or aviation consumer whose license was previously canceled, the Commissioner shall notify all suppliers of the issuance.

B. A supplier who sells motor fuel to a distributor, *importer* or aviation consumer after receiving notice from the Commissioner that the Commissioner has canceled the distributor's, *importer's* or aviation consumer's license shall be jointly and severally liable with the distributor, *importer* or aviation consumer for any tax due on motor fuel the supplier sells to the distributor, *importer* or aviation consumer after receiving the notice; however, the supplier shall not be liable for tax due on motor fuel sold to a previously unlicensed distributor, *importer* or aviation consumer after the supplier receives notice from the Commissioner that the Commissioner has issued another license to the distributor, *importer* or aviation consumer.

C. If the Commissioner cancels the license of a supplier, the Commissioner shall notify all licensed distributors, exporters, importers and aviation consumers of the cancellation. If the Commissioner issues a license to a supplier whose license was previously canceled, the Commissioner shall notify all licensed distributors, exporters, importers and aviation consumers of the issuance.

D. A licensed distributor, exporter, importer, or aviation consumer who purchases motor fuel from a supplier after receiving notice from the Commissioner that the Commissioner has canceled the supplier's license shall be jointly and severally liable with the supplier for any tax due on motor fuel purchased from the supplier after receiving the notice; however, the licensed distributor, exporter, importer, or aviation consumer shall not be liable for tax due on motor fuel purchased from a previously unlicensed supplier after the licensee receives notice from the Commissioner that the Commissioner has issued another license to the supplier.

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

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

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

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

D. 1. Each (i) bulk user of alternative fuel or retailer of alternative fuel liable for tax pursuant to subsection A and (ii) provider of alternative fuel liable for the tax pursuant to subsection B shall file a

monthly tax return with the Department. The tax on alternative fuel levied by this article, except for the annual license tax imposed under subsection B of § 58.1-2249, that is required to be remitted to the Commonwealth shall be payable to the Commonwealth not later than the date on which the return is due. A return *and payment* shall be (i) postmarked ~~by~~ ~~the~~ ~~last~~ *on or before the fifteenth* day of the *second* month succeeding the month for which the return ~~is~~ *and payment are* due or (ii) received by the Department by the twentieth day of the second month succeeding the month for which the return ~~is~~ *and payment are* due. However, a monthly return of the tax for the month of May shall be (i) postmarked by June 25 or (ii) received by the Commissioner by the last business day the Department is open for business in June.

2. If a tax return *and payment* due date falls on a Saturday, Sunday, or a state or banking holiday, the return shall be postmarked *on or before the fifteenth day of the second month succeeding the month for which the return and payment are due* or received by the Department by midnight of the next business day the Department is open for business. This provision shall not apply to a return of the tax for the month of May.

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

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

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

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

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

1. The amount of alternative fuel received during the ~~quarter~~ *month*;

2. The amount of alternative fuel sold or used during the ~~quarter~~ *month*;

3. The number of gallons for which a deduction was taken during the ~~quarter~~ *month* pursuant to § 58.1-2254, by provider, if applicable; and

4. The number of gallons sold in exempt sales during the ~~quarter~~ *month*, by type of sale, and the purchaser of the fuel in the exempt sales, if applicable.

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

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

§ 58.1-2275. Record-keeping requirements.

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