

# 2004 SPECIAL SESSION I

INTRODUCED

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## HOUSE BILL NO. 5007

Offered March 21, 2004

A *BILL to amend and reenact §§ 58.1-2217, 58.1-2249, 58.1-2289, 58.1-2701, and 58.1-2706 of the Code of Virginia, relating to motor fuel taxes.*

Patron—Sickles

Referred to Committee on Finance

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

**1. That §§ 58.1-2217, 58.1-2249, 58.1-2289, 58.1-2701, and 58.1-2706 of the Code of Virginia are amended and reenacted, as follows:**

§ 58.1-2217. Taxes levied; rate.

A. There is hereby levied a tax at the rate of ~~seventeen and one-half~~ *twenty-four and one-half* cents per gallon on gasoline and gasohol.

B. There is hereby levied a tax at the rate of ~~sixteen~~ *twenty-three* cents per gallon on diesel fuel.

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

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

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

F. In accordance with § 62.1-44.34:13, a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth.

§ 58.1-2249. Tax on alternative fuel.

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

B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of ~~fifty~~ *\$100* per vehicle on each highway vehicle that is fueled from a private source if the alternative fuels tax levied under this article has not been paid on fuel used in the vehicle. If such a highway vehicle is not in operation by January 1 of any year, the license tax shall be reduced by one-twelfth for each complete month which shall have elapsed since the beginning of such year.

§ 58.1-2289. Disposition of tax revenue generally.

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

Revenues collected under this chapter may be also used for (i) contributions toward the construction,

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59 reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law  
60 and (ii) expenditures for the operation and maintenance of the Department of Transportation, the  
61 Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority,  
62 and the Department of Motor Vehicles as may be provided by law.

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

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

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

82 D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial  
83 watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of  
84 the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the  
85 purposes provided generally in subsection C of § 29.1-701, including acquisition, construction,  
86 improvement and maintenance of public boating access areas on the public waters of this  
87 Commonwealth and for other activities and purposes of direct benefit and interest to the boating public  
88 and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial  
89 fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be  
90 used for the construction, repair, improvement and maintenance of the public docks of this  
91 Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction,  
92 improvement and maintenance of the public docks shall be made according to a plan developed by the  
93 Virginia Marine Resources Commission.

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

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

108 § 58.1-2701. Amount of tax.

109 A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to  
110 ~~nineteen and one-half~~ *twenty-six and one-half* cents per gallon calculated on the amount of motor fuel,  
111 diesel fuel or liquefied gases (which would not exist as liquids at a temperature of sixty degrees  
112 Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within the  
113 Commonwealth.

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

116 B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles  
117 that are not registered under the International Registration Plan shall pay a fee of ~~\$100~~ *\$150* per year  
118 for each qualified highway vehicle. The fee is due and payable when the vehicle registration fees are  
119 paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

120 If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due

at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the registration fee paid is authorized by law.

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

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

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

B. When the amount of the credit to which any motor carrier is entitled for any quarter exceeds the amount of the tax for which such carrier is liable for the same quarter, the excess may: (i) be allowed as a credit on the tax for which such carrier would be otherwise liable for any of the eight succeeding quarters or (ii) be refunded, upon application, duly verified and presented and supported by such evidence as may be satisfactory to the Department.

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

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

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

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

**2. That the provisions of this act are effective (i) July 1, 2006, or (ii) 30 days after the Tax Commissioner determines that the statewide monthly average retail price per gallon of self-serve unleaded regular gasoline has decreased by at least five cents per gallon from the date of the passage of this act, whichever occurs first, but not sooner than in due course.**

**3. That the provisions of this act shall expire on: (i) July 1, 2005, if the 2005 Session of the General Assembly fails to pass a constitutional amendment that prohibits the use of funds in the Transportation Trust Fund for any purpose other than transportation; (ii) July 1, 2006, if the 2005 Session of the General Assembly passes such constitutional amendment, but the 2006 Session of the General Assembly fails to pass such constitutional amendment; or (iii) January 1, 2007, if the 2005 and 2006 Sessions of the General Assembly pass such constitutional amendment, but the amendment fails to pass at a statewide referendum held on November 7, 2006.**