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**SENATE BILL NO. 833**

Offered January 12, 2011

Prefiled January 7, 2011

*A BILL to amend and reenact §§ 58.1-2201, 58.1-2217, 58.1-2249, 58.1-2701, as it is currently effective and as it may become effective, and 58.1-2706 of the Code of Virginia, relating to annually changing the rate of Virginia's fuels taxes by using changes in the fuel efficiencies of motor vehicles.*

Patron—Petersen

Referred to Committee on Finance

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

**1. That §§ 58.1-2201, 58.1-2217, 58.1-2249, 58.1-2701, as it is currently effective and as it may become effective, and 58.1-2706 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 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.

"Base year fuel efficiency index" means the quotient obtained using as the numerator the total annual vehicle miles traveled in the Commonwealth in 2007 and using as the denominator the total gallons of motor fuel consumed for highway use in the Commonwealth in 2007. The numerator and the denominator shall be such amounts as published by the Federal Highway Administration of the United States Department of Transportation.

"Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a de minimis 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 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

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59 is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax  
60 collection, accounting, or remitting obligations.

61 *"Current year fuel efficiency index" means the quotient obtained using as the numerator the total*  
62 *annual vehicle miles traveled in the Commonwealth for the most recently published year and using as*  
63 *the denominator the total gallons of motor fuel consumed for highway use in the Commonwealth for the*  
64 *most recently published year. The numerator and the denominator shall be such amounts as published*  
65 *by the Federal Highway Administration of the United States Department of Transportation.*

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

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

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

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

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

80 "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C.  
81 § 4082.

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

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

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

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

91 "Fuel" includes motor fuel and alternative fuel.

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

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

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

97 "Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and  
98 are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have  
99 an American Society for Testing Materials octane number of less than 75 as determined by the motor  
100 method; (ii) a petroleum product component of gasoline, such as naphtha, reformate, or toluene; (iii)  
101 gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an  
102 aircraft engine.

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

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

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

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

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

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

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

120 "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 for hire by means of a pipeline, a tank wagon, a 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 60 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 company; 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 or dispenses the fuel at retail, to be used to generate power to operate a highway vehicle.

"Supplier" means (i) a position holder, or (ii) a person who receives motor fuel pursuant to a two-party exchange. 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

182 48.4081-1.

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

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

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

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

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

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

201 "Watercraft" means any vehicle used on waterways.

202 § 58.1-2217. Taxes levied; rate.

203 A. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline and  
204 gasohol.

205 B. (Contingent expiration date - see Editor's notes) There is hereby levied a tax at the rate of  
206 seventeen and one-half cents per gallon on diesel fuel.

207 B. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of sixteen  
208 cents per gallon on diesel fuel.

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

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

216 E. (Contingent expiration date - see Editor's notes) There is hereby levied a tax at the rate of five  
217 cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than  
218 an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first  
219 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by  
220 any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per  
221 gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an  
222 aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed  
223 under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation  
224 jet fuel taxable under this chapter shall be liable for the tax ~~imposed at the rate of seventeen and~~  
225 ~~one-half cents per gallon on a per-gallon basis at the same rate as the tax levied on diesel fuel~~, along  
226 with any penalties and interest that may accrue.

227 E. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of five  
228 cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than  
229 an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first  
230 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by  
231 any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per  
232 gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an  
233 aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed  
234 under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation  
235 jet fuel taxable under this chapter shall be liable for the tax ~~imposed at the rate of sixteen cents per~~  
236 ~~gallon on a per-gallon basis at the same rate as the tax levied on diesel fuel~~, along with any penalties  
237 and interest that may accrue.

238 F. The rates of taxes on gasoline, gasohol, and diesel fuel under subsections A and B shall be  
239 increased or decreased annually using the base year fuel efficiency index and the current year fuel  
240 efficiency index. If the current year fuel efficiency index is greater than the base year fuel efficiency  
241 index, then the adjusted rate of tax for each such fuel shall be the product of (i) the rate of tax for such  
242 fuel as set forth under subsection A or B, as applicable, and (ii) the sum of 1 + the percentage by  
243 which the current year fuel efficiency index is greater than the base year fuel efficiency index. If the

current year fuel efficiency index is less than the base year fuel efficiency index, then the adjusted rate of tax for each such fuel shall be the product of (a) the rate of tax for such fuel as set forth under subsection A or B, as applicable, and (b) the quotient obtained using as the numerator the current year fuel efficiency index and using as the denominator the base year fuel efficiency index.

In December of each year, the Commissioner shall compute the adjusted rate of tax for gasoline, gasohol, and diesel fuel on a per-gallon basis rounded to the nearest one-tenth of one cent and shall promptly report the same in writing to the Governor and the General Assembly. Once the Commissioner has computed the adjusted rates of taxes, then the adjusted rate of tax for each such fuel shall be imposed for the immediately following 12-month period beginning on April 1 and ending on the next April 1 in lieu of the rate of tax for gasoline, gasohol, and diesel fuel as set forth under subsection A or B, as applicable.

FG. 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. (Contingent expiration date - see Editor's notes) There is hereby levied a tax at the rate of ~~seventeen and one-half cents per gallon~~ on a per-gallon basis at the same rate as the tax levied on gasoline under § 58.1-2217 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 ~~seventeen and one-half cents per gallon~~ on a per-gallon basis at the same rate as the tax levied on gasoline under § 58.1-2217 on all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

A. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of ~~sixteen cents per gallon~~ on a per-gallon basis at the same rate as the tax levied on diesel fuel under § 58.1-2217 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 cents per gallon~~ on a per-gallon basis at the same rate as the tax levied on diesel fuel under § 58.1-2217 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 dollars 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.

§ 58.1-2701. (Contingent expiration date - see Editor's notes) Amount of tax.

A. Except as provided in subsection B, every motor carrier shall pay a road tax at a per-gallon rate equivalent to ~~\$0.24 three and one-half cents~~ per gallon greater than the tax imposed on each gallon of diesel fuel under § 58.1-2217 (excluding subsection G of such section) calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within the Commonwealth.

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

B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles that are not registered under the International Registration Plan shall pay a fee of ~~\$150~~ \$175 per year for each qualified highway vehicle. The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

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.

§ 58.1-2701. (Contingent effective date - see Editor's notes) Amount of tax.

A. Except as provided in subsection B, every motor carrier shall pay a road tax at a per-gallon rate equivalent to ~~nineteen and one-half~~ ~~three and one-half~~ cents per gallon greater than the tax imposed on each gallon of diesel fuel under § 58.1-2217 (excluding subsection G of such section) calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within the Commonwealth.

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

307 B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles  
308 that are not registered under the International Registration Plan shall pay a fee of ~~\$100~~ \$125 per year  
309 for each qualified highway vehicle. The fee is due and payable when the vehicle registration fees are  
310 paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

311 If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due  
312 at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration  
313 expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the  
314 registration fee paid is authorized by law.

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

317 § 58.1-2706. Credit for payment of motor fuel, diesel fuel or liquefied gases tax.

318 A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax *at a per-gallon*  
319 *rate equivalent to seventeen and one-half cents per gallon the tax imposed on each gallon of diesel fuel*  
320 *under § 58.1-2217 (excluding subsection G of such section)* on all motor fuel, diesel fuel and liquefied  
321 gases purchased by such carrier within the Commonwealth for use in its operations either within or  
322 without the Commonwealth and upon which the motor fuel, diesel fuel or liquefied gases tax imposed  
323 by the laws of the Commonwealth has been paid by such carrier. Evidence of the payment of such tax  
324 in such form as may be required by, or is satisfactory to, the Department shall be furnished by each  
325 carrier claiming the credit herein allowed.

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

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

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

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

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

342 **2. That the Commissioner of the Department of Motor Vehicles shall develop and make publicly**  
343 **available guidelines no later than September 1, 2011, for purposes of developing processes and**  
344 **procedures implementing the provisions of this act. The development, issuance, and publication of**  
345 **the guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et**  
346 **seq. of the Code of Virginia).**

347 **3. That the Commissioner of the Department of Motor Vehicles shall periodically publish the**  
348 **rates of taxes on fuels taxable under Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1 of the Code of**  
349 **Virginia for purposes of identifying the rates of taxes currently in effect under §§ 58.1-2217 and**  
350 **58.1-2249 of the Code of Virginia.**