

# VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

## CHAPTER 363

*An Act to amend and reenact §§ 58.1-2204, 58.1-2208, 58.1-2263, and 58.1-2274 of the Code of Virginia, relating to motor fuels tax.*

[H 536]

Approved March 23, 2012

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

**1. That §§ 58.1-2204, 58.1-2208, 58.1-2263, and 58.1-2274 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-2204. Persons required to be licensed.

A. A person shall obtain a license issued by the Commissioner before conducting the activities of:

1. A refiner, who shall be licensed as a supplier;
2. A supplier;
3. A terminal operator;
4. An importer;
5. An exporter;
6. A blender;
7. A motor fuel transporter;
8. ~~A bulk user of undyed diesel fuel;~~
9. ~~A retailer of undyed diesel fuel;~~
- ~~10.~~ 9. An aviation consumer;
- ~~11.~~ 10. A bonded importer;
- ~~12.~~ 10. An elective supplier; or
- ~~13.~~ 11. A fuel alcohol provider.

B. A person who is engaged in more than one activity for which a license is required shall have a separate license for each activity, except as provided in subsection C.

C. 1. A person who is licensed as a supplier shall not be required to obtain a separate license for any other activity for which a license is required and shall be considered to have a license as a distributor.

2. A person who is licensed as an occasional importer shall not be required to obtain a license as a distributor.

3. A person who is licensed as a distributor shall not be required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or permissive supplier. Such licensed distributor shall not be required to obtain a separate license as an exporter.

4. A person who is licensed as a distributor or a blender shall not be required to obtain a separate license as a motor fuel transporter if he does not transport motor fuel for others for hire.

~~5. A person who is licensed as a distributor shall not be required to obtain a separate license as a retailer of undyed diesel fuel.~~

§ 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.

§ 58.1-2263. Shipping documents; transportation of motor fuel loaded at a terminal rack or bulk plant rack; civil penalty.

A. A person shall not transport motor fuel ~~by barge, watercraft, railroad tank car or transport truck loaded at a terminal rack or bulk plant rack~~ 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~~ *means of conveyance* into which motor fuel is loaded at the terminal rack or bulk plant rack.

B. The shipping document issued by the terminal operator 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~~ 90 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 loaded at a terminal rack or bulk plant rack~~ 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. *If the fuel is transported by any other means of conveyance, the civil penalty imposed under this subsection shall be payable by the person in whose name the means of conveyance is registered.* 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.

§ 58.1-2274. Unlawful importing, transportation, delivery, storage, acquiring or sale of fuel; sale to enforce assessment.

A. Upon the discovery of any fuel illegally imported into, or illegally transported, delivered, stored, *acquired*, or sold in, the Commonwealth, the Commissioner ~~shall~~ *may* order the tank or other storage receptacle in which the fuel is located to be seized and locked or sealed until the tax, penalties and interest levied under this chapter are assessed and paid.

B. If the assessment for such tax is not paid within ~~thirty~~ 30 days, the Commissioner is hereby authorized, in addition to the other remedies authorized in this chapter, to sell such fuel and use the proceeds of such sale to satisfy the assessment due, with any funds which exceed the assessment and costs of the sale being returned to the owner of the fuel.

C. All fuel and any property, tangible or intangible, which may be found upon the person or in any vehicle which such person is using, including the vehicle itself, to aid the person in the transportation or sale of illegally transported, delivered, stored, sold, imported or acquired fuel, and any property found in the immediate vicinity of any place where such illegally transported, delivered, stored, sold, imported or acquired fuel may be located, including motor vehicles, tanks, and other storage devices, used to aid in the illegal transportation or sale of such fuel, shall be deemed contraband and shall be forfeited to the Commonwealth.

D. Any efforts by the Department to effect the forfeiture allowed under the authority of this section shall be governed by Chapter 22 (§ 19.2-369 et seq.) of Title 19.2, *mutatis mutandis*. However, such procedures shall not be applicable to the Department's tax collection powers and the use of such powers to enforce a tax liability against the illegally transported, delivered, stored, sold, imported or acquired fuel.