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HOUSE BILL NO. 2130

Offered January 11, 2017

Prefiled January 11, 2017

A BILL to amend and reenact §§ 58.1-2292, 58.1-2295, as it is currently effective, and 58.1-2299.20, as it is currently effective, of the Code of Virginia, relating to the motor vehicle fuels sales tax in certain transportation districts.

Patron—Levine

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2292, 58.1-2295, as it is currently effective, and 58.1-2299.20, as it is currently effective, of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2292. Definitions.

As used in this chapter unless the context requires a different meaning:

"Alternative fuel" means the same as that term is defined in § 58.1-2201.

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

"Cost price" means the same as that term is defined in § 58.1-602, and also includes all federal and state excise taxes and storage tank fees paid by the distributor. "Cost price" does not include separately stated federal diesel fuel excise taxes, unless the distributor fails to exclude the federal diesel excise tax when collecting the tax imposed pursuant to this chapter.

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

"Distributor" means (i) any person engaged in the business of selling fuels in the Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any fuels for sale, or any other person engaged in the business of selling fuels in the Commonwealth; (ii) any person who makes, manufactures, fabricates, processes, or stores fuels in the Commonwealth for sale in the Commonwealth; or (iii) any person engaged in the business of selling fuels outside the Commonwealth who ships or transports fuels to any person in the business of selling fuels in the Commonwealth.

"Fuel" means any fuel subject to tax under Chapter 22 (§ 58.1-2200 et seq.).

"Gasoline" means the same as that term is defined in § 58.1-2201.

"Gross sales" means the same as that term is defined in § 58.1-602.

"Liquid" means the same as that term is defined in § 58.1-2201.

"Retail dealer" means any person, including a distributor, who sells fuels to a consumer or to any person for any purpose other than resale.

"Sale" means the same as that term is defined in § 58.1-602 and also includes the distribution of fuel by a distributor to itself as a retail dealer.

"Sales price" means the same as that term is defined in § 58.1-602 and also includes all transportation and delivery charges, regardless of whether the charges are separately stated on the invoice. Sales price does not include separately stated federal diesel fuel excise taxes, unless the distributor fails to exclude the federal diesel excise tax when collecting the tax imposed pursuant to this chapter.

"Wholesale price" means the same as that term is defined in § 58.1-2201.

§ 58.1-2295. (Contingent expiration date) Levy; payment of tax.

A. 1. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in any county or city that is a member of (i) any transportation district in which a rapid heavy rail commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass transportation system are owned, operated, or controlled by an agency or commission as defined in § 33.2-1901 or (ii) any transportation district that is subject to subsection C of § 33.2-1915 and that is contiguous to the Northern Virginia Transportation District.

2. Beginning July 1, 2017, the tax under this subsection shall be imposed on each gallon of fuel sold by a distributor to a retail dealer for retail sale in any county or city set forth in subdivision 1 at a rate of three percent of the regional price of a gallon of fuel for the applicable base period, as determined by the Commissioner as set forth in this subdivision. In any such sale to a retail dealer in which the distributor and the retail dealer are the same person, the sales price charged by the distributor shall be the cost price to the distributor for the fuel.

INTRODUCED

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59 *In computing the regional price of a gallon of fuel, the Commissioner shall use the period from*
 60 *December 1 through May 31 as the base period for such determination for the immediately following*
 61 *applied period, beginning July 1 and ending December 31, inclusive. The period from June 1 through*
 62 *November 30 shall be the next base period for the immediately following applied period beginning*
 63 *January 1 and ending June 30, inclusive. Until such time as the regional price computed pursuant to*
 64 *this subdivision, is equal or greater to the statewide average wholesale price of a gallon of unleaded*
 65 *regular gasoline on February 20, 2013, as determined by the Commissioner pursuant to § 58.1-2217, if*
 66 *a regional price computed from a base period to be used for the immediately following applied period*
 67 *is less than the regional price used for the preceding applied period, then the regional price for such*
 68 *immediately following applied period shall remain at the preceding applied period's regional price and*
 69 *shall be used for comparison with the next computed regional price.*

70 *3. Once a regional price computed pursuant to subdivision 2 is equal to or greater than the*
 71 *statewide average wholesale price of a gallon of unleaded regular gasoline on February 20, 2013, as*
 72 *determined by the Commissioner pursuant to § 58.1-2217, then the actual regional price computed for a*
 73 *base period pursuant to subdivision 2 to be used for the immediately following applied period shall be*
 74 *used regardless of whether such regional price is less than the regional price used for the preceding*
 75 *applied period. However, in no case shall an average regional price of a gallon of unleaded regular*
 76 *gasoline be used that is (i) less than the statewide average wholesale price of a gallon of unleaded*
 77 *regular gasoline on February 20, 2013, as determined by the Commissioner pursuant to § 58.1-2217 or*
 78 *(ii) greater than \$4 per gallon of unleaded regular gasoline.*

79 *4. For alternative fuels other than liquid alternative fuels, the Commissioner shall determine an*
 80 *equivalent tax rate based upon gasoline gallon equivalency.*

81 *5. For purposes of this subsection, "regional price" means the average sales price of fuels sold in a*
 82 *county or city set forth in subdivision 1.*

83 *B. 1. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every*
 84 *distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in*
 85 *any county or city that is located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200*
 86 *et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of not less than 1.5 million but*
 87 *fewer than two million, as shown by the most recent United States Census, has not less than 1.2 million*
 88 *but fewer than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less*
 89 *than 15 million but fewer than 50 million riders per year across all transit systems within the Planning*
 90 *District or (ii) as shown by the most recent United States Census meets the population criteria set forth*
 91 *in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i). In any*
 92 *case in which the tax is imposed pursuant to clause (ii), such tax shall be effective beginning on the*
 93 *July 1 immediately following the calendar year in which all of the criteria have been met.*

94 *B. The tax shall be imposed at a rate of 2.1 percent of the sales price charged by a distributor for*
 95 *fuels sold to a retail dealer for retail sale in any such county or city. In any such sale to a retail dealer*
 96 *in which the distributor and the retail dealer are the same person, the sales price charged by the*
 97 *distributor shall be the cost price to the distributor of the fuel.*

98 *2. Beginning July 1, 2017, the tax under this subsection shall be imposed as provided in this*
 99 *subdivision for fuels sold by a distributor to a retail dealer for retail sale in any such county or city.*
 100 *The tax shall be imposed based on the statewide average wholesale price of a gallon of unleaded*
 101 *regular gasoline, excluding federal and state excise taxes, as determined by the Commissioner.*

<i>Average wholesale price of unleaded regular gasoline</i>	<i>Tax</i>
<i>\$2.50 per gallon and below</i>	<i>\$0.14 per gallon</i>
<i>\$2.51 through \$3.00 per gallon</i>	<i>\$0.08 per gallon</i>
<i>\$3.01 per gallon and above</i>	<i>\$0.05 per gallon</i>

106 *For alternative fuels other than liquid alternative fuels, the Commissioner shall determine an*
 107 *equivalent tax rate based upon gasoline gallon equivalency. In determining the average wholesale price*
 108 *of a gallon of unleaded regular gasoline, the Commissioner shall calculate the average wholesale price*
 109 *each calendar month as a base period for the succeeding applied period beginning two calendar months*
 110 *after the beginning of the base period.*

111 *C. The tax levied under this section shall be imposed at the time of sale by the distributor to the*
 112 *retail dealer.*

113 *D. The tax imposed by this section shall be paid by the distributor, but the distributor shall*
 114 *separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax*
 115 *shall be a debt from the retail dealer to the distributor until paid and shall be recoverable at law in the*
 116 *same manner as other debts. No action at law or suit in equity under this chapter shall be maintained in*
 117 *the Commonwealth by any distributor who is not registered under § 58.1-2299.2 or is delinquent in the*
 118 *payment of taxes imposed under this chapter.*

119 **§ 58.1-2299.20. (Contingent expiration date) Disposition of tax revenues.**

120 *A. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the*

121 sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A
122 1 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be
123 deposited in a special fund entitled the "Special Fund Account of the Transportation District of
124 _____" The amounts deposited in the special fund shall be distributed monthly to the applicable
125 transportation district commission of which the county or city is a member to be applied to the
126 operating deficit, capital, and debt service of the mass transit system of such district or, in the case of a
127 transportation district subject to the provisions of subsection C of § 33.2-1915, to be applied to and
128 expended for any transportation purpose of such district. In the case of a jurisdiction which, after July 1,
129 1989, joins a transportation district which was established on or before January 1, 1986, and is also
130 subject to subsection C of § 33.2-1915, the funds collected from that jurisdiction shall be applied to and
131 expended for any transportation purpose of such jurisdiction. The direct costs of administration shall be
132 credited to the funds appropriated to the Department.

133 B. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the
134 sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A
135 2 B 1 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be
136 deposited into special funds established by law. In the case of Planning District 23, the revenue
137 generated and collected therein shall be deposited into the fund established in § 33.2-2600. For
138 additional Planning Districts that may become subject to this section, funds shall be established by
139 appropriate legislation. The direct cost of administration shall be credited to the funds appropriated to
140 the Department.

141 2. That the regional price, as defined in subdivision A 1 of § 58.1-2295, as it is currently effective,
142 of the Code of Virginia, as amended by this act, of a gallon of fuel, as defined in § 58.1-2292 of
143 the Code of Virginia, for the base period from December 1, 2016, through May 31, 2017, for the
144 immediately following applied period beginning July 1, 2017, and ending December 31, 2017,
145 inclusive, and as calculated pursuant to subdivision A 2 of § 58.1-2295, as it is currently effective,
146 of the Code of Virginia, as amended by this act, shall in no case be less than the statewide average
147 sales price of a gallon of fuel on January 11, 2017.