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HOUSE BILL NO. 768

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 9, 2018)

(Patron Prior to Substitute—Delegate Jones, S.C.)

A BILL to amend and reenact §§ 58.1-2292, 58.1-2295, as it is currently effective, 58.1-2299, 58.1-2299.10, and 58.1-2299.14 of the Code of Virginia, relating to the motor vehicle fuels sales tax in certain regions of the Commonwealth; price floor.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2292, 58.1-2295, as it is currently effective, 58.1-2299, 58.1-2299.10, and 58.1-2299.14 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.

"Applied period" means the period of time in which a tax rate is imposed.

"Base period" means the period of time used to calculate the statewide average distributor price.

"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.

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

"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.

"Distributor charges" means the amount calculated by the Department to approximate the value of the items, on a per gallon basis, excluding the wholesale price of a gallon of fuel, upon which the tax imposed by § 58.1-2295 was calculated prior to July 1, 2018.

"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.

"Statewide average distributor price" means the statewide average wholesale price of a gallon of unleaded regular gasoline or diesel fuel, as appropriate, plus distributor charges.

"Statewide average wholesale price" means the statewide average wholesale price of a gallon of unleaded regular gasoline or diesel fuel, as appropriate, calculated pursuant to § 58.1-2217.

"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. 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 located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of not less than 1.5 million but fewer than two million, as shown by the most recent United States Census, has not less than 1.2 million but fewer than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million but fewer than 50 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i). In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met.

B. 1. The tax shall be imposed on each gallon of fuel, other than diesel fuel, sold by a distributor to a retail dealer for retail sale in any such county or city described in subsection A at a rate of 2.1 percent of the sales price charged by a distributor for fuels sold to a retail dealer for retail sale in any such county or city. 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 of the fuel statewide average distributor price of a gallon of unleaded regular gasoline as determined by the Commissioner pursuant to subsection C. For alternative fuels other than liquid alternative fuels, the Commissioner shall determine an equivalent tax rate based on gasoline gallon equivalency.

2. The tax shall be imposed on each gallon of diesel fuel sold by a distributor to a retail dealer for retail sale in any such county or city at a rate of 2.1 percent of the statewide average distributor price of a gallon of diesel fuel as determined by the Commissioner pursuant to subsection D.

C. To determine the statewide average distributor price of a gallon of unleaded regular gasoline:

1. The Commissioner shall use the period from June 1 to November 30, inclusive, as the base period for the determination of the rate of the tax for the immediately following applied period beginning January 1 and ending June 30, inclusive. The Commissioner shall use the period from December 1 to May 31, inclusive, as the base period for the determination of the rate of the tax for the immediately following applied period beginning July 1 and ending December 31, inclusive.

2. If the statewide average distributor price of a gallon of unleaded regular gasoline for a base period is equal to or higher than the statewide average distributor price used to set the rate of the tax for the immediately preceding applied period, the Commissioner shall set the rate of the tax using the statewide average distributor price for the base period.

3. If the statewide average distributor price of a gallon of unleaded regular gasoline for a base period is lower than the statewide average distributor price used to set the rate of the tax for the immediately preceding applied period, the Commissioner shall continue to set the rate of the tax using the statewide average distributor price that was used to set the rate of the tax for the immediately preceding applied period.

4. Notwithstanding the provisions of subdivisions 2 and 3, once the statewide average distributor price of a gallon of unleaded regular gasoline reaches an amount equal to or exceeding the statewide average wholesale price of a gallon of unleaded regular gasoline on February 20, 2013, plus a distributor charge calculated by the Commissioner for that date, then the Commissioner shall set the rate of the tax for all future applied periods using the actual average distributor price for the applicable base period. However, in no case shall the statewide average distributor price used to calculate the rate of the tax for future applied periods be less than the average wholesale price of a gallon of unleaded regular gasoline on February 20, 2013, plus a distributor charge calculated by the Commissioner for that date.

D. To determine the statewide average distributor price of a gallon of diesel fuel:

1. The Commissioner shall use the period from June 1 to November 30, inclusive, as the base period for the determination of the rate of the tax for the immediately following applied period beginning January 1 and ending June 30, inclusive. The Commissioner shall use the period from December 1 to May 31, inclusive, as the base period for the determination of the rate of the tax for the immediately following applied period beginning July 1 and ending December 31, inclusive.

2. If the statewide average distributor price of a gallon of diesel fuel for a base period is equal to or higher than the statewide average distributor price used to set the rate of the tax for the immediately preceding applied period, the Commissioner shall set the rate of the tax using the statewide average distributor price for the base period.

3. If the statewide average distributor price of a gallon of diesel fuel for a base period is lower than the statewide average distributor price used to set the rate of the tax for the immediately preceding applied period, the Commissioner shall continue to set the rate of the tax using the statewide average distributor price that was used to set the rate of the tax for the immediately preceding applied period.

4. Notwithstanding the provisions of subdivisions 2 and 3, once the statewide average distributor

price of a gallon of diesel fuel reaches an amount equal to or exceeding the statewide average wholesale price of a gallon of diesel fuel on February 20, 2013, plus a distributor charge calculated by the Commissioner for that date, then the Commissioner shall set the rate of the tax for all future applied periods using the actual average distributor price for the applicable base period. However, in no case shall the statewide average distributor price used to calculate the rate of the tax for future applied periods be less than the average wholesale price of a gallon of diesel fuel on February 20, 2013, plus a distributor charge calculated by the Commissioner for that date.

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

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

G. Nothing in this section shall be construed to exempt the imposition and remittance of tax pursuant to this section in a sale to a retail dealer in which the distributor and the retail dealer are the same person.

§ 58.1-2299. Bad debts.

A. In any return filed under the provisions of this chapter, a distributor may credit, against the tax shown to be due on the return, the amount of tax previously returned and paid on accounts which are owed to the distributor and which have been found to be worthless within the period covered by the return. The credit, however, shall not exceed the amount of the uncollected sales price determined by treating prior payments on each debt as consisting of the same proportion of the sales price, tax levied under this chapter, and other nontaxable charges as the total debt originally owed to the distributor tax due pursuant to § 58.1-2295 for the relevant applied period for the fuel delivered to the worthless accounts. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the dealer shall be included in the first return filed after such collection.

B. Notwithstanding any other provision of this section, a distributor whose volume and character of uncollectible accounts, including checks returned for insufficient funds, renders it impractical to substantiate the credit on an account-by-account basis may, subject to the approval of the Department, utilize an alternative method of substantiating the credit.

§ 58.1-2299.10. Willful commission of prohibited acts; criminal penalties.

Any person who willfully commits any of the following acts with the intent to (i) evade or circumvent the taxes imposed under this chapter or (ii) assist any other person in efforts to evade or circumvent such taxes is guilty of a Class 6 felony, if he:

1. Does not pay the taxes imposed under this chapter and diverts the proceeds from such taxes for other purposes;

2. Is a distributor required to be registered under the provisions of this chapter, or the agent or representative of such a distributor, and converts or attempts to convert proceeds from taxes imposed under this chapter for the use of the distributor or the distributor's agent or representative, with the intent to defraud the Commonwealth;

3. Illegally collects taxes imposed under this chapter when not authorized or licensed by the Commissioner to do so;

4. Conspires with any other person or persons to engage in an act, plan, or scheme to defraud the Commonwealth of proceeds from taxes levied under this chapter;

5. Fails to remit to the Commissioner any tax levied pursuant to this chapter, if he (i) has added, or represented that he has added, the tax to the sales price for the fuel and (ii) has collected the amount of the tax; or

6. Applies for or collects from the Department a tax credit when the person knows or has reason to know that fuel for which the credit is claimed has been or will be used for a taxable purpose; however, if the amount of fuel involved is not more than 20 gallons, such person is guilty of a Class 1 misdemeanor.

§ 58.1-2299.14. Recordkeeping requirements; inspection of records; civil penalties.

A. Every distributor required to make a return and pay or collect any tax under this chapter shall keep and preserve suitable records of the sales taxable under this chapter, and such other books of account as may be necessary to determine the amount of tax due hereunder, and such other pertinent information as may be required by the Commissioner. Such records shall be kept and maintained for a period to include the Department's current fiscal year and the previous three fiscal years.

B. The Commissioner or any agent authorized by him may examine during the usual business hours all records, books, papers, or other documents of any distributor required to be registered under this

chapter relating to the sales price amount of any fuel subject to taxation under this chapter to verify the truth and accuracy of any statement or any other information as to a particular sale.

C. Any person who fails to keep or retain records as required by this section shall be subject to a civil penalty. The amount of the civil penalty assessed against a person for his first violation shall be \$1,000. The amount of the civil penalty assessed against a person for each subsequent violation shall be \$1,000 more than the amount of the civil penalty for the preceding violation.

D. Any person who refuses to allow an inspection authorized under this section shall be subject to a civil penalty of \$5,000 for each refusal.

2. That the Department of Motor Vehicles (Department) shall develop guidelines, with the input of relevant stakeholders, to determine the distributor charges, as defined by § 58.1-2292 of the Code of Virginia, as amended by this act, to be added to the wholesale price of a gallon of fuel in order to establish the statewide average distributor price of a gallon of fuel pursuant to § 58.1-2295 of the Code of Virginia, as amended by this act. Such guidelines shall include a procedure for a review of the items included in the distributor charge and an adjustment of the charge, if necessary, at the same time that the Department computes the tax for an applicable base period pursuant to § 58.1-2217 of the Code of Virginia. The guidelines required by this enactment shall not be subject to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

3. That the Commissioner of the Department of Motor Vehicles shall calculate the statewide average distributor cost, as defined by § 58.1-2292 of the Code of Virginia, as amended by this act, of a gallon of unleaded regular gasoline on June 1, 2018. Such distributor cost shall be used for the imposition of the tax set forth in subdivision B 1 of § 58.1-2295 of the Code of Virginia, as amended by this act, for the applied period of July 1, 2018, through December 31, 2018, inclusive.

4. That the Commissioner of the Department of Motor Vehicles shall calculate the statewide average distributor cost, as defined by § 58.1-2292 of the Code of Virginia, as amended by this act, of a gallon of diesel fuel on June 1, 2018. Such distributor cost shall be used for the imposition of the tax set forth in subdivision B 2 of § 58.1-2295 of the Code of Virginia, as amended by this act, for the applied period of July 1, 2018, through December 31, 2018, inclusive.