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## HOUSE BILL NO. 215

Offered January 17, 1994

*A BILL to amend and reenact § 58.1-2101 of the Code of Virginia, relating to motor fuel and special fuel tax definitions.*

Patrons—Parrish, Marshall and Rollison; Senators: Barry, Chichester and Colgan

Referred to Committee on Finance

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

**1. That § 58.1-2101 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-2101. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Aircraft" means any kind of vehicle designed or used for untethered navigation or flight in the air.

"Anhydrous ethyl alcohol" means ethyl alcohol or ethanol of at least 198.5 proof.

"Assessment" means a written determination by the Department of Motor Vehicles of the amount of taxes owed by a taxpayer. Assessments made by the Department of Motor Vehicles shall be deemed to be made when a written notice of assessment is delivered to the taxpayer by the Department of Motor Vehicles or is mailed by certified or registered mail to the taxpayer at his last known address.

"Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation special fuel in any fiscal year and is licensed pursuant to § 58.1-2135.

"Aviation fuel" means either a motor fuel or special fuel designed for use in the operation of aircraft, and sold or used for that purpose.

"Aviation fuel user" means any person, other than an "aviation consumer," who receives, uses, or stores aviation fuel.

"Bonded aviation fuel" means aviation special fuel held in bonded storage under United States Customs Law and delivered into the fuel supply tank of aircraft operated by certificated air carriers on international flights.

"Bulk plant" means a motor fuel or special fuel storage facility, other than a terminal, which is used primarily for redistribution of motor fuel or special fuel.

"Bulk storage" means a storage of fuel for redistribution in bulk quantities by tank truck, tank car or transport truck.

"Bulk user" means any person who maintains bulk storage facilities solely for the purpose of fueling aircraft or motor vehicles owned, leased or operated by him.

"Clean special fuels" means all products or energy sources used to propel a motor vehicle which, when compared to conventional gasoline or reformulated gasoline, will result in lower emissions or oxides of nitrogen, volatile organic compounds, carbon monoxide or particulates or any combination thereof, and includes compressed natural gas, liquified natural gas, liquified petroleum gas, hydrogen, hythane (a combination of compressed natural gas and hydrogen) and electricity.

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

"Corporate or partnership officer" means an officer or director of a corporation, or partner of a partnership, or member of a limited liability company, who as such officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax collection, accounting, or remitting obligations.

"Dealer" means and includes the following persons, required to be licensed as a dealer pursuant to § 58.1-2135:

(a) A person who imports, or causes to be imported, into the Commonwealth any motor fuel for use by or distribution or sale and delivery to another in the Commonwealth.

(b) A person who imports, or causes to be imported, into the Commonwealth any motor fuel for his own use in any container other than the usual tank or receptacle connected with the engine of the motor vehicle which will consume such motor fuel during its operation.

(c) A person selling over one-half million gallons of motor fuel in any calendar year who elects to be licensed as a dealer.

(d) A person who maintains and operates a bulk storage within the Commonwealth who receives motor fuel by tank car, barge, pipeline delivery, common or contract carrier or self-owned equipment from another point within the Commonwealth.

(e) A person who produces, refines, manufactures or compounds any motor fuel in the Commonwealth for use, distribution or sale and delivery in the Commonwealth.

(f) A person who produces, refines, manufactures or compounds motor fuel in the Commonwealth

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60 for his own use.

61 The term "dealer" shall not include a railroad company purchasing motor fuel for use in its railroad  
62 business and not for use in motor vehicles on the highways of the Commonwealth. The Commissioner  
63 may designate dealers as limited dealers or jobbers, but the designation by the Commissioner of a dealer  
64 as a limited dealer or jobber shall not of itself deprive the limited dealer or jobber of the right to  
65 refunds to which they would have otherwise been entitled under the provisions of subdivision 3 of  
66 subsection B of § 58.1-2111.

67 "Denatured alcohol" means alcohol made unfit for human consumption according to a formula  
68 approved by the Federal Bureau of Alcohol, Tobacco and Firearms.

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

71 "Destination state" means the state for which a tanker truck or barge is destined to off-load the fuel  
72 it is transporting into storage facilities for purposes of resale or consumption in such state.

73 "Exemption certificate" means a serially numbered certificate approved and issued by the  
74 Commissioner, which is to be affixed on bulk storage facilities of resellers and bulk users of special fuel  
75 for the purpose of exempting fuel delivered therein from the special fuel tax due to the nonhighway use  
76 of such special fuel.

77 "Export" means (i) fuel delivered out of state by or for the seller constitutes an export by the seller  
78 or (ii) fuel delivered out of state by or for the purchaser constitutes an export by the purchaser.

79 "Exporter" means any person, other than a dealer or supplier, who purchases fuel in the  
80 Commonwealth for the purpose of transporting or delivering such fuel to another state, district or  
81 country. This definition does not apply to fuel transported outside of the Commonwealth in the fuel  
82 supply tank of a motor vehicle or aircraft. Such a person is required to be licensed in Virginia as an  
83 exporter pursuant to § 58.1-2135 and to submit monthly reports pursuant to § 58.1-2109.1 or  
84 § 58.1-2120.3.

85 "Fuel" or "fuels" means all combustible gases and liquids used or suitable for use in an internal  
86 combustion engine or motor for the generation of power to propel motor vehicles or aircraft. The terms  
87 shall include both motor fuel and special fuel.

88 "Fuel oil distributor" means any person who only sells or imports #1 fuel oil, #2 fuel oil, or kerosene  
89 within the Commonwealth.

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

92 "Import" means (i) fuel delivered into Virginia from out of state by or for the seller constitutes an  
93 import by the seller or (ii) fuel delivered into Virginia from out of state by or for the purchaser  
94 constitutes an import by the purchaser.

95 "Jobber" means any person who receives motor fuel by tank car, barge, pipeline, common or contract  
96 carrier or in self-owned equipment from a point within Virginia who has not qualified to pay the motor  
97 fuel tax directly to the Commonwealth, if such person complies with all of the applicable provisions of  
98 this chapter.

99 "Licensee" means any person licensed by the Commissioner pursuant to § 58.1-2135.

100 "Limited dealer" means any person maintaining and operating a bulk storage within the  
101 Commonwealth who receives motor fuels from a duly licensed dealer from a point within Virginia, if  
102 such motor fuel is delivered to another point in Virginia by tank car, barge, pipeline, common or  
103 contract carrier or self-owned equipment. In any case where the term "dealer" is used in this chapter  
104 such term shall be deemed to include the term "limited dealer" except where the context clearly  
105 indicates otherwise.

106 "Liquid" means any substance which is liquid at temperatures in excess of sixty degrees Fahrenheit  
107 and a pressure of 14.7 pounds per square inch absolute.

108 "Motor fuel" means all products commonly or commercially known, advertised, offered for sale, sold  
109 or used as gasoline, including casinghead or natural gasoline. The term shall include all other types of  
110 additives when such additives are mixed or blended into gasoline, regardless of their classifications or  
111 uses.

112 "Motor vehicles" means all vehicles, engines, machines or mechanical contrivances which are  
113 propelled by internal combustion engines or motors and upon which or by which any person or property  
114 is or may be transported or drawn upon a public highway.

115 "Principal" means (i) in the case of a partnership, all the partners; (ii) in the case of a corporation, all  
116 its officers, directors, and controlling owners, whether directly or indirectly; and (iii) in the case of a  
117 limited liability company, all its members.

118 "Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum  
119 products which are capable of use as fuel.

120 "Reseller" means any person, other than a "supplier," who sells or delivers special fuels into a fuel  
121 supply tank of an aircraft or motor vehicle other than an aircraft or motor vehicle owned or operated by

such person and shall include any person selling fuel sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders and other similar agencies located on United States military or other reservations within the boundaries of the Commonwealth, unless such fuel is for the exclusive use of the United States or its departments, agencies and instrumentalities.

"Special fuel" means all "fuels," including clean special fuels and fuel used in any type of aircraft, rocket or similar device, other than motor fuels as are subject to the tax imposed by Article 2 (§ 58.1-2104 et seq.) of this chapter. The term "special fuel" shall include #1 fuel oil, #2 fuel oil, or kerosene when used or intended for use in motor vehicles on the highways.

"Supplier" means any person who *is an exporter of special fuel*, sells or delivers special fuel to a "reseller" or "bulk user" for resale or use in any motor vehicle or aircraft, *or assumes the responsibility and liability for the payment of special fuel tax*. The term includes any person who imports special fuel into the Commonwealth, for use in a motor vehicle or aircraft owned or operated by such person, other than in the usual tank or receptacle connected with the engine of the motor vehicle or aircraft in which the special fuel is to be consumed.

"Synthetic motor fuel" means motor fuel containing at least twenty percent coal-based liquids blended to meet fuel specifications.

"Synthetic special fuel" means fuel containing at least twenty percent coal-based liquids blended to meet specifications.

"Terminal" means a fuel storage and distribution facility which is supplied by pipeline, marine vessel, or rail car and from which fuel may be removed at the rack. The term does not include any facility at which fuel blend stocks and additives are used in the manufacture of products other than fuel and from which no fuel is removed.

"Use" means the actual consumption or receipt of fuel by any person into an aircraft or motor vehicle.

"User" means any person who (i) does not maintain storage facilities for fueling aircraft or motor vehicles and (ii) owns or operates any aircraft or motor vehicle having a gross weight in excess of 5,000 pounds which is propelled by special fuels and is licensed under the laws of the Commonwealth.