

LD8465819

HOUSE BILL NO. 1892

Offered January 20, 1995

A *BILL to amend and reenact §§ 58.1-609.1, 58.1-2100, 58.1-2101, 58.1-2103, 58.1-2105, 58.1-2106, 58.1-2107, 58.1-2111, 58.1-2111.1, 58.1-2112, 58.1-2114 through 58.1-2119, 58.1-2122 through 58.1-2124.1, 58.1-2126, 58.1-2128, 58.1-2128.1, 58.1-2129, 58.1-2133, 58.1-2134, 58.1-2135, 58.1-2142, 58.1-2142.1, 58.1-2144, 58.1-2145, 58.1-2146, 58.1-2146.1, 59.1-21.16:2, and 62.1-44.34:13 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 58.1-2116.1, 58.1-2131.2, 58.1-2131.3, 58.1-2144.1, and 58.1-2145.1; and to repeal §§ 58.1-2108, 58.1-2109.1, 58.1-2120 through 58.1-2120.3 and Article 3.1 (§ 58.1-2127.1 et seq.) of Chapter 21 of Title 58.1 of the Code of Virginia, relating to taxation of motor fuel and other liquid fuels; penalties.*

Patron—Parrish

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.1, 58.1-2100, 58.1-2101, 58.1-2103, 58.1-2105, 58.1-2106, 58.1-2107, 58.1-2111, 58.1-2111.1, 58.1-2112, 58.1-2114 through 58.1-2119, 58.1-2122 through 58.1-2124.1, 58.1-2126, 58.1-2128, 58.1-2128.1, 58.1-2129, 58.1-2133, 58.1-2134, 58.1-2135, 58.1-2142, 58.1-2142.1, 58.1-2144, 58.1-2145, 58.1-2146, 58.1-2146.1, 59.1-21.16:2, and 62.1-44.34:13 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-2116.1, 58.1-2131.2, 58.1-2131.3, 58.1-2144.1, and 58.1-2145.1 as follows:

§ 58.1-609.1. Governmental and commodities exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Motor ~~vehicle~~ fuels, *diesel fuel, aviation special fuel, and clean special fuels* which are subject to the tax imposed by Chapter 21 (§ 58.1-2100 et seq.) of this title. Persons who are refunded any such ~~motor fuel tax or special fuel tax~~ shall, however, be subject to the tax imposed by this chapter, unless such taxes would be specifically exempted pursuant to any provision of this section.

2. Motor vehicles, trailers, semitrailers, mobile homes and travel trailers.

3. Gas, electricity, or water when delivered to consumers through mains, lines, or pipes.

4. Tangible personal property for use or consumption by the Commonwealth, any political subdivision of the Commonwealth, or the United States. This exclusion shall not apply to sales and leases to privately owned financial and other privately owned corporations chartered by the United States.

5. Aircraft subject to tax under Chapter 15 (§ 58.1-1500 et seq.) of this title.

6. Motor fuels ~~and special, diesel fuel, and clean special~~ fuels for use in a boat or ship, upon which a ~~motor fuel tax is refunded pursuant to § 58.1-2113, and upon which a special fuel tax is refunded pursuant to or § 58.1-2122.~~

7. Sales by a government agency of the official flags of the United States, the Commonwealth of Virginia, or of any county, city or town.

8. Materials furnished by the State Board of Elections pursuant to subdivision (8), (9), or (10) of § 24.1-23.

9. Watercraft as defined in § 58.1-1401.

10. Tangible personal property used in and about a marine terminal under the supervision of the Virginia Port Authority for handling cargo, merchandise, freight and equipment. This exemption shall apply to agents, lessees, sublessees or users of tangible personal property owned by or leased to the Virginia Port Authority and to property acquired or used by the Authority or by a nonstock, nonprofit corporation that operates a marine terminal or terminals on behalf of the Authority.

11. Sales by prisoners confined in state correctional facilities of artistic products personally made by the prisoners as authorized by § 53.1-46.

12. Tangible personal property for use or consumption by the Virginia Department for the Visually Handicapped or any nominee, as defined in § 63.1-142, of such Department. (Also see § 63.1-164, which provides a more detailed explanation of the exemption.)

§ 58.1-2100. Title.

This chapter shall be known and may be cited as the "~~Motor Fuel and Special Fuel Fuels Tax Act of Virginia.~~"

§ 58.1-2101. Definitions.

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

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

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

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

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

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

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

72 "Aviation special fuel" means fuel designed for use in the operation of jet aircraft, and sold or used
73 for that purpose. The term shall not include aviation motor fuel.

74 "Blender" includes any person that produces blended fuel.

75 "Blending" means the mixing of one or more petroleum products, with or without another product,
76 regardless of the original character of the product blended, if the product obtained by the blending is
77 capable of use in the generation of power for the propulsion of a highway vehicle, an airplane, or a
78 motorboat. This term does not include that blending which occurs in the process of refining by the
79 original refiner of crude petroleum or the blending of products known as lubricating oils and greases.

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

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

85 "Bulk storage" means a storage of fuel in bulk quantities.

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

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

93 "Commissioner" means the Commissioner of the Department of Motor Vehicles, *or the*
94 *Commissioner's designee.*

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

99 "Dealer" means and includes the following persons, required to be licensed as a dealer pursuant to
100 § 58.1-2135:

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

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

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

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

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

113 (f) A person who produces, refines, manufactures or compounds motor fuel in the Commonwealth
114 for his own use.

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

121 "Denatured alcohol" means alcohol made unfit for human consumption according to a formula

approved by the Federal Bureau of Alcohol, Tobacco and Firearms.

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

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

"Diesel fuel" means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle or diesel-powered boat. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or boat. The term shall include #1 fuel oil, #2 fuel oil, or kerosene when used or intended for use in highway vehicles.

"Dyed diesel fuel" means any diesel fuel that is required to be dyed in accordance with any rule, regulation, or mandate of the United States Environmental Protection Agency or the Internal Revenue Service.

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

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

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

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

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

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

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

"Highway vehicle" means any vehicle operated, or intended to be operated, on a highway. The term does not include: (i) farm machinery including machinery designed for off-road use but capable of movement on roads at low speeds; (ii) a vehicle operated on rails; or (iii) machinery designed principally for off-road use.

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

"Importer" means any person who imports fuel. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is not an importer of record, the owner of the fuel at the time it is brought into the Commonwealth is the importer. Any person who imports fuel is required to be licensed as a dealer or a supplier.

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

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

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

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

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

183 their classifications or uses. *The term shall include aviation motor fuel.*

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

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

190 "Refiner" means any person that owns, operates, or otherwise controls a refinery.

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

193 "Reseller" means any person, other than a "supplier," who sells or delivers *diesel fuel, aviation*
194 *special fuel, and clean* special fuels into a fuel supply tank of an aircraft or ~~motor~~ highway vehicle other
195 than an aircraft or ~~motor~~ highway vehicle owned or operated by such person and shall include any
196 person selling fuel sold by or through post exchanges, ship stores, ship service stores, commissaries,
197 filling stations, licensed traders and other similar agencies located on United States military or other
198 reservations within the boundaries of the Commonwealth, unless such fuel is for the exclusive use of the
199 United States or its departments, agencies and instrumentalities.

200 "Special fuel" means all "fuels," including clean special fuels and fuel used in any type of aircraft,
201 rocket or similar device, other than motor fuels as are subject to the tax imposed by Article 2
202 (§ 58.1-2104 et seq.) of this chapter. The term "special fuel" shall include #1 fuel oil, #2 fuel oil, or
203 kerosene when used or intended for use in motor vehicles on the highways.

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

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

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

216 "Taxable fuel" means *motor fuel, undyed diesel fuel, aviation special fuel, clean special fuels,*
217 *synthetic motor fuel, synthetic special fuel, ethanol and blends thereof and any other substance blended*
218 *with any of the foregoing.*

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

223 "Terminal operator" means any person that owns, operates, or otherwise controls a terminal.

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

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

230 § 58.1-2103. Exchange of information among the states.

231 A. The Commissioner may, in his discretion, upon request from the officials entrusted with the duty
232 of enforcement of the ~~motor fuel and special fuel~~ tax laws of any other state, forward to such officials
233 any information which the Commissioner may have in his possession relative to the production,
234 manufacture, refining, compounding, receipt, sale, use, transportation or shipment by any person of such
235 fuel.

236 B. The Commissioner is authorized to enter into written agreements with duly constituted tax
237 officials of other states and of the United States for the inspection of tax returns, the making of audits,
238 and the exchange of information relating to taxes administered by the Department of Motor Vehicles
239 pursuant to this chapter.

240 C. Any person to whom tax information is divulged pursuant to this section shall be subject to the
241 prohibitions and penalties prescribed in § 58.1-3 as though that person were a tax official as defined in
242 that section.

243 § 58.1-2105. Levy of tax on all motor fuels.

244 A. Except as provided in ~~subsections~~ subsection C and D, there is hereby levied a tax at the rate of

seventeen and one-half cents per gallon on all motor fuel, except aviation *motor* fuel, sold and delivered or used in this Commonwealth. The tax shall be levied on all motor 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. The tax herein imposed and assessed shall be collected by and paid to the Commonwealth but once in respect to any motor fuel. Nothing herein shall be construed to exempt from this tax any dealer in motor fuel on the motor fuel used in making such distribution.

B. A tax at the rate of five cents per gallon is hereby levied on all aviation motor fuel which is sold and delivered or used in Virginia. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation fuel taxable under this chapter shall be liable for the tax at the rate of seventeen and one-half cents per gallon, along with any penalties and interest which may accrue.

C. Upon application to and approval by the Commissioner, any producer of synthetic motor fuel produced from coal in a county with a population between 19,000 and 51,000 as determined by the 1980 U.S. Census shall be subject to tax as set forth in this subsection:

1. For the first three years of production, the tax shall be three cents per gallon;
2. For the fourth year of production, the tax shall be nine cents per gallon;
3. For the fifth year of production, the tax shall be eleven and one-half cents per gallon;
4. For the sixth and seventh years of production, the tax shall be thirteen and one-half cents per gallon;
5. For the eighth and ninth years of production, the tax shall be fifteen and one-half cents per gallon;

and
6. Beginning in the tenth year of production and thereafter, the tax shall be at the rate prescribed in subsection A. The total number of gallons of synthetic motor fuel and synthetic special fuel subject to tax in subsection C of this section and subsection D of § 58.1-2116 shall not exceed twenty-five million gallons per fiscal year.

D. Motor fuel produced in a refinery having a capacity not exceeding 1,000 barrels per day which refinery uses as a raw material not less than ten percent crude oil produced in a county with a population of between 19,000 and 51,000 as determined by the 1980 U.S. Census shall be subject to tax as set forth in this subsection:

1. From July 1, 1989, to July 1, 1991, the tax shall be thirteen and one-half cents per gallon;
2. From July 1, 1991, to July 1, 1993, the tax shall be fifteen and one-half cents per gallon;
3. On and after July 1, 1993, the tax shall be at the rate prescribed in subsection A of this section.

E D. Any dealer who collects the tax on motor fuel shall be liable for the payment thereof to the Department of Motor Vehicles.

§ 58.1-2106. Exemptions from tax.

Each dealer, ~~limited dealer, or jobber~~ in motor fuels shall be exempt from the payment of any motor fuel taxes on such motor fuels:

1. Sold and delivered by a dealer in the Commonwealth to the Commonwealth or any political subdivision thereof for the exclusive use by the Commonwealth or any political subdivision thereof; or
2. Sold and delivered by a dealer in the Commonwealth to the United States or its departments, agencies and instrumentalities for the exclusive use by the United States or its departments, agencies and instrumentalities.

The term "exclusive use by the United States or its departments, agencies and instrumentalities" shall be construed to specifically exclude the use of such motor fuel by any person, whether operating under contract with the United States or its departments, agencies and instrumentalities or not, if the original purchase by such person from a dealer would have rendered the dealer liable for the payment of motor fuel taxes under the laws of this Commonwealth.

§ 58.1-2107. Reports; payment of tax.

A. On or before the last day of each calendar month, each dealer ~~or limited dealer~~ and jobber in motor fuel shall render to the Commissioner a statement, on forms prepared and furnished by the Commissioner, which shall show:

- (1) 1. The quantity of motor fuel on hand on the first and last days of the preceding calendar month;
- (2) 2. The quantity of motor fuel received, produced, manufactured, refined or compounded during the preceding calendar month;
- (3) 3. The quantities of motor fuel sold and delivered or used within the Commonwealth during the preceding calendar month;
- (4) The quantities of motor fuel sold or delivered to a limited dealer; and, if applicable,
- (5) The 4. If applicable, the quantity of aviation motor fuel on hand the first and last days of the preceding calendar month; the quantity of aviation motor fuel received, produced, refined or

306 compounded during the month; and the quantity sold, delivered or used during the month. All such
307 information pertaining to aviation motor fuel shall be separately stated and attached to the monthly
308 report.

309 B. At the time of rendering such report the dealer shall pay to the Commissioner the tax herein
310 levied on all motor fuel sold and delivered or used within the Commonwealth during the preceding
311 calendar month except that which is sold to a limited dealer or another duly licensed motor fuel dealer.
312 No dealer shall pay the tax on motor fuel received by him from a point within the Commonwealth from
313 another duly licensed dealer who has paid or assumed the payment of such tax.

314 A limited dealer shall at the time of rendering such report to the Commissioner pay the tax herein
315 levied on all motor fuel received from a point within the Commonwealth from a dealer during the
316 preceding calendar month. The tax shall be paid to the Commissioner on the number of gallons
317 purchased, invoiced and delivered by the supplying dealer.

318 § 58.1-2111. Refund of tax on motor fuel.

319 A. A refund shall be granted in accordance with the provisions of § 58.1-2112 to any person who
320 establishes to the satisfaction of the Commissioner that he has paid the tax levied pursuant to this
321 chapter and such tax was paid upon the single purchase of five or more gallons of any motor fuel
322 utilized for any of the following purposes:

323 1. Operating or propelling commercial boats and ships, stationary gas engines, or pumping or mixing
324 equipment on ~~motor~~ highway vehicles if the motor fuel used to operate such equipment is stored in an
325 auxiliary tank separate from the motor fuel tank used to propel the ~~motor~~ highway vehicle, and the
326 ~~motor~~ highway vehicle is mechanically incapable of self-propulsion while motor fuel is being used from
327 the auxiliary tank;

328 2. Operating or propelling tractors used for agricultural purposes;

329 3. Operating or propelling buses owned and operated by a county or the school board thereof while
330 being used to transport children to and from public schools;

331 4. Operating or propelling buses owned or solely used by a private nonprofit nonsectarian school
332 while being used to transport children to and from such school or from such school to and from
333 educational or athletic activities. The total refunds allowed to any applicant under this subdivision with
334 respect to all motor fuel, *diesel fuel*, *aviation special fuel*, and *clean* special fuels as are subject to the
335 tax under this chapter shall not, in any fiscal year, exceed the sum of \$2,000;

336 5. Operating or propelling the equipment of volunteer fire-fighting companies and of volunteer rescue
337 squads within the Commonwealth actually and necessarily used for fire-fighting or rescue purposes;

338 6. Operating or propelling motor equipment belonging to counties, cities and towns if actually and
339 exclusively used in public activities;

340 7. Operating or propelling licensed or unlicensed ~~motor~~ highway vehicles and other equipment used
341 exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or lessee of
342 such vehicle and not operated on or over any public highway for any purpose other than for the purpose
343 of moving it in the manner and for the purposes hereinbefore authorized. If such ~~motor~~ highway vehicle
344 has been licensed under the provisions of Chapter 6 (§ 46.2-600 et seq.) of Title 46.2, no refund shall be
345 granted until the license tags furnished for the vehicle have been delivered to the clerk of the circuit
346 court in which the owner or lessee of such vehicle resides or to the nearest office issuing such licenses.
347 The clerk or agent of such office shall issue a receipt for the tags and shall be entitled to a fee of
348 twenty-five cents. The owner or lessee of such ~~motor~~ highway vehicle shall be entitled to a fuel tax
349 refund as above provided on fuel used in the operation of such vehicle for such time as the tags are left
350 with the clerk or agent. The owner or lessee may surrender the receipt to the clerk or agent at any time,
351 who shall forthwith return the tags and notify the Commissioner;

352 8. Spraying purposes or for cleaning, dyeing or other commercial use, except in ~~motor~~ highway
353 vehicles operated, or intended to be operated in whole or in part upon any of the public highways,
354 streets or alleys of the Commonwealth;

355 9. Operating and propelling ~~motor~~ highway vehicles used solely for racing other ~~motor~~ highway
356 vehicles on a race track;

357 10. Operation of a farm by a resident of the Commonwealth, such farm being located on any island
358 outside the Commonwealth but within one mile of its boundaries;

359 11. Any private, nonprofit area agency on aging, designated by the Department for the Aging,
360 providing transportation services to citizens in *highway* vehicles owned, leased, operated or under
361 contract by such area agency; and

362 12. Operating or propelling ~~motor~~ highway vehicles owned by a nonprofit organization which
363 provides specialized transportation to various locations for elderly or handicapped individuals to secure
364 essential services and to participate in community life according to the individual's respective interests
365 and abilities.

366 B. A refund shall be granted in accordance with § 58.1-2112 of any tax paid pursuant to this chapter
367 upon motor fuel:

1. Purchased by a person, firm or corporation and subsequently transported and delivered by such person, firm or corporation to another state, district or country for sale or use without the Commonwealth;

2. Sold by a dealer in the Commonwealth to any corporation, partnership or other entity performing transportation under contract or lease with any transportation district created under the Transportation District Act of 1964 (§ 15.1-1342 et seq.) for use in a ~~motor~~ highway vehicle which is controlled by a transportation district and used in providing transit service by the transportation district by contract or lease. The refund provided for in this paragraph shall be paid to the corporation, partnership or other entity performing such transportation;

3. Transferred to a duly licensed dealer for bulk storage in the Commonwealth by tank car, barge, pipeline or transport truck from a point within the Commonwealth by another duly licensed dealer who has paid or assumed the payment of the tax. No dealer who is reporting the tax on a sales basis with stock loss shown as a nontaxable item shall be eligible for such a refund, nor shall any refund be paid on any fuel which is subsequently sold tax exempt or exported from the Commonwealth as subject to export refund under subdivision B 1 of this section; or

4. Proven to be lost by accident, except through personal negligence or theft.

C. Any county or city school board or any private, nonprofit, nonsectarian school contracting with a private carrier to transport children to and from public schools or any private, nonprofit, nonsectarian school shall be refunded the tax imposed by this chapter on such carrier on fuel so used. Such refund shall be paid pursuant to § 58.1-2112.

D. On any island in this Commonwealth on which no ~~motor~~ highway vehicle is operated upon any public highways, streets or alleys, the refund provided for by this section may be made, pursuant to § 58.1-2112, to the merchant selling such motor fuel to the consumer.

§ 58.1-2111.1. Refund for solid waste compacting vehicles and ready-mix concrete vehicles.

Any person who purchases motor fuel in quantities of five gallons or more at any one time for consumption in a solid waste compacting ~~motor~~ highway vehicle or a ready-mix concrete ~~motor~~ highway vehicle, where the vehicle's equipment is mechanically or hydraulically driven by the internal combustion engine that propels the vehicle, shall be entitled to a refund in an amount equal to thirty-five percent of the tax paid on such fuel. The procedure for obtaining such refund shall be as provided in § 58.1-2112.

§ 58.1-2112. Procedure to obtain refund; time for filing.

Any person entitled to a refund pursuant to § 58.1-2111 or § 58.1-2111.1 shall file with the Commissioner an application in writing on a form prepared and furnished by the Commissioner, duly signed by the applicant, and accompanied by a paid ticket or invoice from the dealer or retail distributor showing such purchase. A ticket issued to the holder of a credit card evidencing the delivery to such holder of tax-paid motor fuel shall, for the purpose of this section, be deemed a paid ticket or invoice. The application shall set forth the basis for the claimed refund, the total amount of such fuel purchased and used by such applicant, other than in ~~motor~~ highway vehicles operated or intended to be operated upon any of the public highways, streets or alleys of this Commonwealth, and how used.

Upon the presentation of the application and paid ticket, invoice or facsimile, the Commissioner shall refund to the applicant the taxes paid on fuel sold and delivered and used, other than fuel sold, delivered and used for ~~motor~~ highway vehicles.

The application for refund shall be filed with the Commissioner within twelve months from the date of the sale as shown on the paid ticket or invoice. Notwithstanding, an application for a refund pursuant to subdivision 1 of subsection B of § 58.1-2111 shall be filed within three years of the date such motor fuel is transported without the Commonwealth, and an application for a refund pursuant to subdivision 3 of subsection B of § 58.1-2111 shall be filed within ninety days of the date such motor fuel is received.

An application for a refund shall be deemed filed if it is sent to the Commissioner in an envelope bearing a postmark dated on or before midnight of the last day on which it could have been filed with the Commissioner in person.

In the event an assessment is rendered for failure to report and pay the tax imposed by § 58.1-2105 and such fuel is subject to refund under the provisions of § 58.1-2111, application for refund may be filed with the Commissioner by the person entitled to such refund within twelve months from the date such assessment is paid and shall be accompanied by invoices covering the sale of the fuel and billing of tax to such person.

§ 58.1-2114. Refunds to certain bus lines and taxicab services; payment.

A. Any person who purchases motor fuel for consumption in ~~motor~~ highway vehicles used in operating an urban or suburban bus line or a taxicab service within the Commonwealth, or used in regular route service over the highways of this Commonwealth by common carriers of passengers certificated pursuant to § 56-280 shall be entitled to a refund on the tax paid on any such motor fuel. However, no refund shall be granted unless the majority of the passengers utilizing such bus line or

429 taxicab service do so for the purpose of travel for a distance of not more than forty miles, one way, in a
430 single day between their place of abode and their place of employment, shopping areas or schools.

431 The amount of the refund shall be equal to the amount of the tax paid, except for refunds granted on
432 the tax paid on fuel used by a taxicab service. The refund granted on fuel used by a taxicab service
433 shall be in an amount equal to the tax paid less one cent per gallon on fuel so used.

434 B. Any person entitled to a refund under subsection A of this section shall file with the
435 Commissioner, on forms prepared and furnished by him, an application, in writing, duly signed by the
436 applicant, and accompanied by a paid ticket or invoice from the dealer or retailer showing such
437 purchase. The application shall set forth: (i) the total amount of fuel purchased; (ii) the total amount of
438 fuel used as provided in subsection A of this section; and (iii) how such fuel was used. The
439 Commissioner, upon the presentation of such application and paid ticket, invoice or other document,
440 shall pay to the applicant from the taxes collected on motor fuel, the refund as provided in subsection A
441 of this section. The application for a refund must be filed with the Commissioner within three months
442 from the date of the sale or invoice.

443 No refund shall be granted for ~~motor vehicle~~ fuel taxes paid on taxicab services unless the applicant
444 is the holder of a permit from the State Corporation Commission. No such applicant shall be denied a
445 refund by reason of the fee arrangement between the holder of the permit and the driver or drivers, if all
446 other conditions of this section have been met. Any refunds made hereunder shall be deducted from the
447 urban highway funds allocated to the highway construction district, pursuant to Article 1.1 (§ 33.1-23.01
448 et seq.) of Chapter 1 of Title 33.1, in which the recipient has its principal place of business.

449 C. Except as otherwise provided in this chapter, all provisions of law applicable to the refund of
450 gasoline taxes and other motor fuel taxes by the Commissioner shall apply to the refunds authorized by
451 this section. Any city, town or county having withdrawn its roads from the secondary system of state
452 highways under the provisions of § 11 of Chapter 415 of the Acts of 1932 shall receive its proportionate
453 share of such special funds as is now provided by law with respect to other motor fuel tax receipts.

454 § 58.1-2115. Use of metered pumps by resellers; invoices or delivery tickets to be furnished by
455 supplier; requirement for a shipping document.

456 A. Each reseller shall dispense all ~~liquid diesel fuel, aviation special fuel, and clean special fuel fuels~~
457 sold by him to others from metered pumps which indicate the total amount of fuel measured through
458 such pumps. Each pump ~~from which dyed diesel fuel is dispensed~~ shall have *conspicuously* marked
459 thereon the words "*Dyed Diesel Fuel Non-Taxable Use Only; Penalty for Taxable Use*"; or, if the fuel
460 sold is not *dyed* diesel fuel, such other words descriptive of the type of fuel dispensed through such
461 pump as shall be prescribed by regulations promulgated by the Commissioner.

462 B. Each sale of ~~liquid diesel fuel, aviation special fuel, and clean special fuel fuels~~ by a supplier,
463 other than at a retail pump, shall be evidenced by an invoice or delivery ticket. The invoice or ticket
464 shall have the name and address of the supplier printed or stamped thereon and shall show the name and
465 address of the purchaser, date of purchase, number of gallons, price per gallon, tax per gallon, ~~and a~~
466 ~~breakdown of any taxes, surcharges or other additional fees, the total amount of the invoice, and any~~
467 ~~other information as may be reasonably required by the Commissioner.~~ One copy of the invoice or
468 ticket shall be delivered to the purchaser at the time of sale, and a copy shall be retained by the supplier
469 and preserved as other records are required to be preserved under this chapter.

470 C. Each supplier shall ~~add collect~~ the amount of the tax imposed pursuant to this chapter ~~to the price~~
471 ~~of the fuel sold by him.~~ The amount of the tax ~~may~~, *surcharges, or other additional fees* shall be
472 stated separately from the price of the fuel on all sale or delivery slips, bills, and statements which
473 indicate the price of such fuel. Bills shall be rendered to all purchasers of fuel by suppliers selling such
474 fuel. The bill shall contain a statement, in a conspicuous place, that the liability for the tax hereby
475 imposed has been assumed and that the supplier will pay the tax thereon.

476 D. Not more than one original copy of any invoice for a single sale of fuel shall be prepared by any
477 person. Any additional copy prepared shall be plainly marked "Duplicate," and the number of the
478 original ticket or invoice shall be indicated thereon.

479 E. Each person operating a refinery, terminal or bulk plant within the Commonwealth shall prepare
480 and provide to the person operating each vehicle or waterborne vessel, receiving cargo in bulk at the
481 facility, a shipping document which states on its face the destination state for the fuel received, as
482 represented by the purchaser or the purchaser's agent. The supplier or terminal operator may rely for all
483 purposes of this chapter on the representation of the purchaser or the purchaser's agent as to the intended
484 destination state, and the purchaser and his agent shall be liable for any tax otherwise due as a result of
485 a diversion of the fuel from the represented destination state.

486 F. No person engaged in the transportation or shipment of ~~special~~ fuel, whether by water, rail, or the
487 highways, shall transport ~~special~~ fuel into or out of or within Virginia unless such ~~special~~ fuel shipment
488 is accompanied by a bill of lading, manifest or shipping document issued by the person operating the
489 refinery, terminal or bulk plant from which the fuel was accepted indicating the following: (i) where the
490 ~~special~~ fuel was accepted, (ii) its destination state, ~~and~~ (iii) the gallonage and type of fuel being

transported, *and (iv) whether it is dyed or undyed diesel fuel.* The Commissioner shall prescribe by regulation such additional information as may be necessary to implement this requirement.

§ 58.1-2116. Levy of tax; liability for tax.

A. Except as otherwise provided in subsections B, C, D, *and E and F and § 58.1-2118*, there is hereby levied a tax at the rate of sixteen cents per gallon upon all special fuel:

1. Sold or delivered by any supplier into a bulk storage facility of any licensed reseller or bulk user;
2. Used by any supplier in any motor vehicle owned, leased, or operated by him;
3. Delivered by a supplier directly into the fuel supply tank of a motor vehicle;
4. Imported by a reseller or bulk user, into this Commonwealth;
5. Acquired tax free by a reseller, bulk user, or user in this Commonwealth, for resale or use for the propulsion of a motor vehicle; or
6. Purchased by any person, firm or corporation, except a licensed supplier, and subsequently transported and delivered by such person, firm, or corporation to another state, district, or country for sale or use without *the sale or use of diesel fuel in the Commonwealth.*

B. A tax at the rate of five cents per gallon is hereby imposed upon all aviation special fuel:

1. Sold or delivered by any supplier, other than an aviation consumer, to any licensed reseller or bulk user;
2. Used by a supplier, other than an aviation consumer, in any aircraft owned, leased or operated by him;
3. Delivered by a supplier directly into the fuel supply tank of an aircraft, other than an aircraft owned, leased or operated by a licensed aviation consumer; or
4. Imported by a reseller or bulk user into, or acquired tax free by a reseller, bulk user or user in this Commonwealth for resale or use for the propulsion of an aircraft *except that which is sold to another duly licensed supplier or an aviation consumer.*

C. A tax at the rate of five cents per gallon is hereby imposed on aviation special fuel purchased or acquired for use by an aviation fuel user. A tax at the rate of five cents per gallon is hereby imposed upon the first 100,000 gallons of aviation special fuel, excluding bonded aviation special fuel, purchased or acquired for use by any aviation consumer in any fiscal year. A tax at the rate of one-half cent per gallon is hereby imposed on all aviation special fuel, excluding bonded aviation special fuel, purchased or acquired for use in excess of 100,000 gallons by an aviation consumer in any fiscal year.

Any person who shall, while licensed or unlicensed under this chapter, use, acquire for use, sell or deliver for use in highway vehicles any aviation special fuel taxable under this article shall be liable for the tax imposed at the rate of sixteen cents per gallon under this section, along with any penalties and interest which may accrue.

D. Upon application to and approval by the Commissioner, any producer of synthetic special fuel produced from coal in a county with a population between 19,000 and 51,000 as determined by the 1980 U.S. Census shall be subject to tax as follows:

1. For the first three years of production, the tax shall be three cents per gallon;
2. For the fourth year of production, the tax shall be nine cents per gallon;
3. For the fifth year of production, the tax shall be eleven and one-half cents per gallon;
4. For the sixth and seventh years of production, the tax shall be thirteen and one-half cents per gallon;
5. For the eighth and ninth years of production, the tax shall be fifteen and one-half cents per gallon; and

6. Beginning in the tenth year of production and thereafter, the tax shall be at the rate prescribed in subsection A. The total number of gallons of synthetic special fuel and synthetic motor fuel subject to tax in this subsection and subsection C of § 58.1-2105 shall not exceed twenty-five million gallons per fiscal year.

E. Special fuel produced in a refinery having a capacity not exceeding 1,000 barrels per day which refinery uses as a raw material not less than ten percent crude oil produced in a county with a population of between 19,000 and 51,000 as determined by the 1980 U.S. Census, shall be subject to tax as follows:

1. From July 1, 1989, to July 1, 1991, the tax shall be twelve cents per gallon;
2. From July 1, 1991, to July 1, 1993, the tax shall be fourteen cents per gallon;
3. On and after July 1, 1993, the tax shall be at the rate prescribed in subsection A.

F. Beginning January 1, 1994, and ending *until* July 1, 1998, there is hereby levied a tax at the rate equivalent to ten cents per gallon upon all clean special fuels:

1. Sold or delivered by any supplier to any licensed reseller or bulk user;
2. Used by any supplier in any motor vehicle owned, leased, or operated by him;
3. Delivered by a supplier directly into the fuel supply tank of a motor vehicle; or
4. Acquired tax free by a reseller, bulk user, or user in this Commonwealth, for resale or use for the

552 ~~propulsion of a motor vehicle sold for use or used in highway vehicles. On and after July 1, 1998, there~~
553 ~~is hereby levied a tax at the rate equivalent to sixteen cents per gallon upon all clean special fuels sold~~
554 ~~for use or used in highway vehicles.~~

555 G F. Any supplier who collects the tax on *diesel fuel, aviation special fuel, and clean special fuel*
556 *fuels* shall be liable for the payment thereof to the Department of Motor Vehicles.

557 § 58.1-2116.1. *Backup tax; joint liability.*

558 Any operator of a highway vehicle who uses *dyed diesel fuel, or any other liquid, in a fuel supply*
559 *tank of a highway vehicle, except as otherwise provided in § 58.1-2118, is liable for the payment of the*
560 *tax imposed under § 58.1-2116. In addition, any person who delivers dyed diesel fuel, or any other*
561 *liquid, into the supply tank of a highway vehicle and who knew or had reason to know that the fuel was*
562 *dyed diesel fuel, is jointly and severally liable for the payment of the tax imposed under § 58.1-2116.*

563 § 58.1-2117. Liability for tax on nontaxpaid diesel fuel or aviation special fuel sold or delivered.

564 Any person, licensed or unlicensed, who delivers any *diesel fuel or aviation special fuels fuel* upon
565 which the tax due hereunder has not been paid, into any storage facility maintained in connection with
566 the sale of fuel by any person, service station or firm not licensed under this chapter which is engaged
567 in the business of dispensing gasoline, *diesel fuel or aviation special fuel* for the purpose of propelling
568 ~~licensed motor~~ highway vehicles shall be liable for the tax imposed by this chapter. Such person shall
569 make reports as required under § 58.1-2119.

570 § 58.1-2117.1. Liability for certain taxes not paid on clean special fuels.

571 A. Any person not required to be licensed as a supplier who fuels his pickup, panel truck, or
572 passenger vehicle from a private residence or otherwise uses clean special fuels upon which the tax
573 imposed on clean special fuels has not been paid shall pay an annual license tax of fifty dollars per
574 vehicle.

575 B. The Commissioner shall annually starting January 1, 1994, collect or cause to be collected the
576 annual tax from owners of *highway vehicles* subject to the license tax under this section. Applications
577 for such licenses shall be supplied by the Department of Motor Vehicles. In the case of a ~~motor~~
578 *highway vehicle* which is not in operation by January 1 of any year, a license shall be purchased for a
579 fractional period of such year, and the amount of the license tax shall be reduced by one-twelfth for
580 each complete month which shall have elapsed since the beginning of such year.

581 C. Upon payment of the tax required by subsection B, the Commissioner shall issue to the applicant
582 a license certificate to use such fuel in the Commonwealth. The license certificate so issued shall be
583 conspicuously affixed to the source of the clean special fuel supply.

584 D. The penalty for any violation of this section shall be equal to ten percent of the tax due. After
585 imposition of the penalty, the tax and penalty shall bear interest at the rate of one percent per month
586 until the tax and penalty are paid. The Commissioner shall have the power to reduce or waive any
587 penalties provided in this section if the violation is due to reasonable or good cause as shown to the
588 satisfaction of the Commissioner.

589 § 58.1-2118. Exemptions from tax.

590 No tax shall be levied or collected pursuant to this article on:

591 1. ~~Special fuel~~ *Diesel fuel, aviation special fuel, and clean special fuels* sold to the United States or
592 its departments, agencies and instrumentalities *for the exclusive use by the United States or its*
593 *departments, agencies and instrumentalities* thereof;

594 2. ~~Special fuel~~ *Diesel fuel, aviation special fuel, and clean special fuels* sold to the Commonwealth
595 of Virginia or any political subdivision *for the exclusive use by the Commonwealth or any political*
596 *subdivision* thereof;

597 3. ~~Special fuel~~ *Diesel fuel and clean special fuels* sold to any volunteer fire-fighting company or
598 volunteer rescue squad within the Commonwealth for use in equipment used for fire-fighting or rescue
599 purposes;

600 4. Aviation special fuel sold to aviation consumers; or

601 5. ~~Liquid petroleum gas, commonly referred to as "LP gas" or "propane gas," sold or delivered to~~
602 ~~any licensed reseller or bulk user that does not own or operate a motor vehicle propelled by liquefied~~
603 ~~petroleum gas or maintain storage facilities for resale or delivery of such fuel for highway consumption;~~
604 ~~or~~

605 6. ~~Special fuel delivered into bulk storage facilities of any licensed reseller or bulk user which have~~
606 ~~an exemption certificate affixed thereto.~~

607 5. *Dyed diesel fuel used for purposes other than to propel highway vehicles.*

608 As used in this section, "exclusive use" shall be construed to exclude the use of fuel by any person,
609 whether operating under contract or not, if the original purchase by such person from a supplier would
610 have rendered the supplier liable for the payment of fuel taxes under the laws of this Commonwealth.

611 § 58.1-2119. Reports; payment of tax.

612 A. On or before the last day of each calendar month, each supplier of ~~liquid~~ fuel and each aviation
613 consumer shall render to the Commissioner a statement, on forms prepared and furnished by the

Commissioner; which shall show: (i) the quantity of special fuel on hand on the first and last days of the preceding calendar month; (ii) the quantity received during the month; and (iii) the quantity used or sold to resellers or bulk users.

Each supplier and aviation consumer of special fuels which are not liquid shall render to the Commissioner a statement on forms prepared and furnished by the Commissioner, which shall show reports of inventories as the Commissioner shall by regulation require, and shall also show the quantity of special fuel used or sold for highway or aviation use during the preceding calendar month. The gallons of special fuel used or gallons sold which are not liquid shall be the actual measured gallons. However, special fuel used in vehicles which are equipped with a bulk tank for delivery of fuel and which have no separate fuel tank for the propulsion of the vehicle, may be reported on the basis of mileage operated converted to gallons by using a ratio of miles to gallons which shall be furnished by the Commissioner.

B. At the time of rendering such report the supplier and aviation consumer shall pay to the Commissioner the tax herein levied during the preceding calendar month.

§ 58.1-2122. Refund of tax on fuels.

Any person other than a person to whom § 58.1-2124 applies, who pays the tax at the rate of sixteen cents per gallon on the purchase of any special fuel in quantities of five gallons or more at any one time shall be entitled to a refund in the amount of the tax paid if:

1. Such fuel is used (i) for purposes other than to propel highway vehicles operated or intended to be operated on the highway, (ii) by buses owned or solely used by a private, nonprofit, nonsectarian school while being used to transport children to and from such school or from such school to and from educational or athletic activities, or (iii) by any private, nonprofit area agency on aging, designated by the Department for the Aging, providing transportation services to citizens in vehicles owned, leased, operated or under contract by such area agency;

2. Such fuel has been lost by accident, except through personal negligence or theft;

3. Such fuel was used by any county or city school board or any private, nonprofit nonsectarian school contracting with a private carrier to transport children to and from public schools or any private schools or any private nonsectarian school; or

4. Such fuel was (i) sold to any corporation, partnership or other entity performing transportation under contract or lease with any transportation district and (ii) used in a motor highway vehicle controlled by a transportation district created under the Transportation District Act of 1964, which motor the highway vehicle is used in providing transit service by the transportation district by contract or lease. The refund provided for in this paragraph shall be paid to the corporation, partnership or other entity performing such transportation.

The total refunds allowed to any one applicant in all cases pursuant to clause (ii) of subdivision 1 of this section with respect to fuel which is subject to the tax imposed by this chapter shall not exceed the sum of \$2,000 in any fiscal year.

Application for refund shall show the purpose for which the fuel was used, and shall be accompanied by the invoice covering the sale of the fuel to such person. In the event an assessment is rendered for failure to report and pay any tax imposed by § 58.1-2116 and such fuel has been used for nonhighway purposes by the consumer, application for refund may be filed with the Commissioner by the consumer within twelve months from the date such assessment is paid and shall be accompanied by invoices covering the sale of the fuel and the billing of the tax to such person.

§ 58.1-2123. Refund where taxpaid fuels transported to another state, district or country for sale or use.

Any person who purchases special fuels upon which the special fuels tax imposed by this chapter has been paid shall be entitled to a refund for the entire amount of the tax paid if such person subsequently transports and delivers such fuel to another state, district or country for sale or use outside of the Commonwealth. A refund shall not be granted pursuant to this section on any special fuel which is transported and delivered outside of the Commonwealth in the fuel supply tank of a motor highway vehicle or aircraft.

The application for a refund shall set forth the fact that such special fuels were transferred out of the Commonwealth for sale or use. The claim must be filed with the Commissioner within three years of the date of payment of the tax for which the refund is claimed.

§ 58.1-2124. Refund for agricultural use.

Any person who at any one time buys special fuel in quantities of five gallons or more on which the tax imposed by this chapter has been paid for the purpose of operating or propelling unlicensed motor/highway vehicles and other unlicensed equipment used for agricultural purposes is entitled to a refund of the tax paid by such person. The amount of the refund shall be paid by the Commissioner as follows:

1. Fifteen and one-half cents of the tax paid on each gallon of fuel so used shall be refunded to the

675 claimant.

676 2. One-half cent of the tax paid on each gallon of fuel so used shall be paid by the Commissioner
677 into the state treasury to the credit of the Virginia Agricultural Foundation Fund as provided by
678 § 58.1-2146.

679 § 58.1-2124.1. Refund for solid waste compacting highway vehicles and ready-mix concrete highway
680 vehicles.

681 Any person who purchases ~~special~~ fuel in quantities of five gallons or more at any one time for
682 consumption in a solid waste compacting ~~motor~~ highway vehicle or a ready-mix concrete ~~motor~~ highway
683 vehicle, where the vehicle's equipment is mechanically or hydraulically driven by the internal
684 combustion engine that propels the vehicle, shall be entitled to a refund in an amount equal to thirty-five
685 percent of the tax paid on such fuel. The procedure for obtaining such refund shall be as provided in
686 § 58.1-2125.

687 § 58.1-2126. Refund to certain bus lines, taxicab services and common carriers.

688 Any person who purchases *diesel fuel or clean special fuel fuels* for consumption in ~~motor~~ highway
689 vehicles used (i) in operating urban or suburban bus lines or taxicab services in the Commonwealth or
690 (ii) in regular route service over the highways of the Commonwealth by common carriers of passengers
691 certified pursuant to § 56-280 shall be entitled to a refund of the tax paid pursuant to this chapter on
692 such fuel. The refund shall be granted upon compliance with the requirements and procedures as
693 provided in § 58.1-2114.

694 § 58.1-2128. Time for filing and payment.

695 Any report ~~of~~ and payment of the ~~motor~~ fuel tax ~~or~~ *special fuel tax* shall be deemed timely filed if
696 received by the Commissioner by midnight of the fifth day of the second month succeeding the month
697 for which the report is ~~filed~~ ~~of~~ and payment is due. Should the fifth day fall on a Saturday, Sunday, or
698 legal holiday, the report or payment shall be deemed timely filed if received by midnight of the next
699 day the ~~Division~~ Department is open for business. Any report or payment received in an envelope
700 bearing a postmark showing that it was mailed on or before midnight of the last day of the month
701 succeeding the month for which the tax is due shall be deemed timely filed.

702 However, the report or payment of the tax for May shall not be deemed timely filed unless it is
703 received by the Commissioner by the last business day the ~~Division~~ Department is open for business in
704 June or received by mail in an envelope bearing a postmark showing that it was mailed on or before
705 midnight of June 25.

706 *A postmark shall mean the official cancellation mark of the United States Postal Service or other*
707 *postal or other delivery service.*

708 § 58.1-2128.1. General application of Article 4.

709 The provisions of this article shall apply to ~~both~~ motor fuel, *diesel fuel, aviation special fuel and*
710 *clean special fuel fuels*. The ~~motor fuel tax and special fuel tax, or either of them, relating to such~~
711 *products* may be referred to as the fuels tax.

712 § 58.1-2129. Collection allowance.

713 As compensation for accounting for ~~not~~ and remitting the tax levied under this chapter, each dealer;
714 ~~limited dealer~~ and supplier shall be allowed a deduction from the tax due of one-half percent of the
715 amount of tax due and accounted for under §§ 58.1-2107 and 58.1-2119 each month, not to exceed \$500
716 monthly for each tax respectively. The deduction shall not be allowed if any amount of tax due was
717 delinquent at the time of payment.

718 § 58.1-2131.2. Period of limitations.

719 *The taxes imposed by this chapter shall be assessed within three years from the date on which such*
720 *taxes became due and payable. In the case of a false or fraudulent return filed with intent to evade*
721 *payment of the taxes imposed by this chapter, or a failure to file a return, the taxes may be assessed, or*
722 *a proceeding in court for the collection of such taxes may be begun without assessment, at any time.*
723 *The Commissioner shall not examine any person's records beyond the three-year period of limitations*
724 *unless he has reasonable evidence of fraud, or reasonable cause to believe that such person was*
725 *required by law to file a return and failed to do so.*

726 § 58.1-2131.3. Waiver of time limitation on assessment of taxes.

727 *If, prior to the expiration of the time prescribed for assessment of any tax imposed by this chapter*
728 *and assessable by the Department, both the Commissioner and the taxpayer have consented in writing to*
729 *the assessment of the tax after such time, the tax may be assessed any time prior to the expiration of the*
730 *period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing*
731 *made before the expiration of the period previously agreed upon.*

732 § 58.1-2133. Retention of records by licensees, users and purchasers for resale.

733 Each licensee shall maintain and keep, for a period of three years, all records pertaining to fuel
734 received, produced, manufactured, refined, compounded, used, sold or delivered within the
735 Commonwealth by such licensee, together with invoices, bills of lading and other pertinent records and
736 papers, as may be required by the Commissioner for the reasonable administration of this chapter.

Each user of *diesel fuel, aviation special fuel, and clean* special fuels shall keep and maintain appropriate records of all ~~special~~ fuel purchases for a period of three years.

Every person purchasing motor fuel taxable under this chapter from a dealer for the purpose of resale shall maintain and keep for a period of three years a record of motor fuel received, the amount of tax paid to the dealer as part of the purchase price, together with delivery tickets, invoices and bills of lading, and such other records as the Commissioner shall require.

§ 58.1-2134. Inspection of records, etc.

A. The Commissioner or any deputy, employee or agent authorized by him may examine, during the usual business hours of the day, records, books, papers, storage tanks and any other equipment of any licensee, purchaser, refiner, *terminal operator*, fuel dealer or distributor, or common carrier for the purpose of ascertaining the quantity of fuel received, produced, manufactured, refined, compounded, used, sold, shipped or delivered, to verify the truth and accuracy of any statement, report or return or to ascertain whether or not the tax imposed by this chapter has been paid.

B. If the licensee is open for business during hours of the day which might not be considered usual business hours for the Department, the Commissioner may examine the licensee's books and records during the licensee's normal business hours, which shall be those hours when the licensee is open for business at any of its places of business or business locations. If the licensee does not maintain its books and records on the premises, the Commissioner or any deputy, employee or agent authorized by him may inspect such books and records where they are maintained, irrespective of the working hours at such location, as long as one of the licensee's places of business maintains hours at the time of day during which the Commissioner asserts such inspection powers.

§ 58.1-2135. Requirement of license; application; bond.

A. Every dealer, ~~limited dealer~~, jobber, supplier, ~~reseller~~, ~~bulk user~~, ~~exporter~~, ~~fuel oil distributor~~ or aviation consumer desiring to receive, use, sell, store, distribute, export or transport any fuel or to engage in such business within the Commonwealth shall file with the Commissioner an application for a license to engage in such business, in such form as the Commissioner may prescribe, including, but not limited to:

1. The name under which the applicant will transact business within the Commonwealth;
2. The location, with street number address, of the applicant's principal office or place of business within the Commonwealth; and
3. The name and complete residence address of the owner or the names and addresses of the partners, or principal officers, if such applicant is a partnership, corporation or association. If the applicant is a corporation organized under the laws of another state, territory or country, such applicant shall also file with the application a certified copy of the certificate or license issued by the State Corporation Commission showing that the corporation is authorized to transact business in the Commonwealth.

B. No license shall be issued to an exporter unless the exporter demonstrates that he is also licensed in the states to which he exports.

C. The Commissioner may license any person either as a supplier, ~~reseller~~, ~~bulk user~~, ~~exporter~~, ~~fuel oil distributor~~ or aviation consumer, whichever is in the best interests of the Commonwealth; however, no person shall be required to be licensed in more than one such category.

D. A background investigation, to include a National Criminal Records search and a Virginia Criminal History Records search, ~~shall~~ *may* be conducted on all applicants for licensure. The Commissioner may refuse to issue a license to any applicant (i) found guilty of any fraud or misrepresentation in any connection or (ii) convicted of any felony involving crimes of moral turpitude. If the applicant is a partnership, corporation, or limited liability company, the Commissioner may refuse to issue a license to any applicant with a principal who has been (i) found guilty of any fraud or misrepresentation in any connection or (ii) convicted of any crime substantially related to one's fitness to conduct a fuel oil distribution business. The Department may charge the applicant a fee of \$100 to defray its administrative costs for conducting said National Criminal Records and Virginia Criminal History Records searches. Such fees shall be paid into the state treasury and set aside as a special fund to be used to meet the expenses of the Department.

E. C. No license shall be issued upon any application unless accompanied by such bond or other security as provided by § 58.1-2136. The bond or other security shall be in an amount to be determined upon investigation by the Commissioner to be approximately three times the anticipated average monthly fuel tax to become due by the applicant during the next succeeding three calendar months. In no event shall the amount of any bond or other security filed in lieu of such bond be less than \$2,000. In case of a jobber who incurs no tax liability to the Division, the amount of bond or other security shall be \$1,000.

On and after July 1, 1993, applicants for licenses shall be subject to a maximum bond or other security of not more than \$150,000 for each license issued. Licensees holding a license prior to July 1,

1993, shall be subject to a maximum bond or other security of not more than \$100,000 for each license issued. Licensees on and after July 1, 1993, may be required by the Commissioner to increase their bond or other security to \$150,000 if the Commissioner, in his sole discretion, determines that (i) their prior payment or reporting history is unsatisfactory or (ii) their financial stability is questionable.

The Commissioner, in his discretion, may reduce the amount of the required bonds as long as he is satisfied that payment of the tax collected on behalf of the Commonwealth will not be jeopardized. Among the factors the Commissioner may consider in making such a determination shall include, but not be limited to, the licensee's prior satisfactory payment record and continuing financial stability.

F D. The bond shall be in such form as may be approved by the Commissioner and shall be payable to the Commonwealth. Such bond shall be executed by a surety company duly licensed to do business under the laws of the Commonwealth, approved by the Bureau of Insurance of the State Corporation Commission and signed by a resident Virginia agent of the surety. The bond or other security as provided for in § 58.1-2136 shall be conditioned upon the prompt filing of true reports and the payment by such dealer, supplier or aviation consumer to the Commissioner of all fuel taxes which are now or which may hereafter be levied or imposed by the Commonwealth, together with all penalties, and interest thereon, and generally upon faithful compliance with the provisions of this chapter. Such bond shall be so written that, upon timely payment of the premium, it shall continue in force from year to year unless sooner terminated as provided by law.

G E. Except as provided in § 58.1-2137 upon receipt of an application in proper form, and upon acceptance and approval of the bond or other security, the Commissioner shall issue to the applicant a license certificate to transact business in the Commonwealth, subject to cancellation of such license as provided by law. However, any licensee shall forthwith furnish the Commissioner information of any changes in the original application.

H F. The license certificate so issued by the Commissioner shall not be assignable, and shall be valid only for the applicant in whose name it is issued. It shall be conspicuously displayed at all times in the principal place of business of the licensee in the Commonwealth.

I G. The Commissioner shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensees. The Commissioner shall, upon request, furnish each licensed ~~supplier~~ licensee a list showing the name and business address of each licensed ~~reseller, bulk user, supplier, dealer,~~ and aviation consumer; and each licensed dealer a list showing the name and address of each limited dealer. The Commissioner shall supply such lists as of the beginning of each fiscal year, and shall thereafter, during such year, supplement such lists monthly.

§ 58.1-2142. Prohibited acts, generally; criminal penalties.

It shall be unlawful for any person to:

1. Fail or refuse to pay the tax imposed by this chapter;

2. Engage in business in the Commonwealth without being the holder of a valid license to engage in such business, if such license is required pursuant to § 58.1-2135;

3. Fail to make any of the reports required by this chapter;

4. Make any false statement in any application, report, ticket, invoice or statement required by this chapter;

5. Refuse to permit the Commissioner or any deputy to examine records as provided by this chapter;

6. Fail to keep proper records of quantities of fuel received, produced, refined, manufactured, compounded, sold, used or delivered in the Commonwealth as required by this chapter;

7. Make any false statement in connection with an application for the refund of any moneys or taxes provided in this chapter or on any delivery ticket or invoice as to the quantity of fuel delivered, sold or used;

8. Use, deliver, or sell any aviation fuel for use *or intended for use* in licensed highway vehicles;

9. Deliver fuel from a tank truck to the fuel tank of a ~~motor~~ highway vehicle, except in an emergency;

10. Maintain any false or forged records, or fail to maintain records, as required by this chapter;

11. Remit false ~~returns~~ or reports to the Commissioner;

12. Interfere with or refuse to permit seizures authorized under § 58.1-2143;

13. Knowingly transport fuel, or cause such fuel to be brought, into the Commonwealth in violation of § 58.1-2104 or § 58.1-2115;

14. Deliver or offer for sale or use within the Commonwealth any fuel which has been imported by a person other than a licensed dealer or supplier or on which the tax levied pursuant to this chapter has not been assumed or paid by a licensed dealer or supplier. Each delivery or sale in violation of this paragraph shall be deemed a separate offense under this section; or

15. Equip any vehicle to which a tank for the transportation of liquid fuel for sale or delivery is attached, with any device to connect the transportation tank to the fuel line of the vehicle from which fuel may be supplied for use by such vehicle.

Any person convicted under this section shall be guilty of a Class 1 misdemeanor.

In addition to any other penalty imposed, the defendant shall be required to pay all taxes and penalties due the Commonwealth under this chapter and pay to the Commonwealth any other moneys wrongfully withheld or illegally refunded.

§ 58.1-2142.1. Willful commission of prohibited acts; criminal penalties.

If any person willfully commits any of the following acts with the intent to evade the Commonwealth's fuels tax laws, or to assist any other person in such evasion efforts, he shall be guilty of a Class 6 felony:

1. Importing or causing to be imported into the Commonwealth any fuel unless: (i) such person is the holder of a valid license, (ii) the liability for the tax imposed under this chapter has been assumed by a licensee holding a valid license, or (iii) such person is a common carrier operating under the authority of the State Corporation Commission. The provisions of this subdivision shall not apply to the importation of fuel into the Commonwealth in the fuel supply tank of a ~~motor~~ highway vehicle.

2. Altering, manipulating, replacing, or in any other manner tampering or interfering with, or causing to be altered, manipulated, replaced, tampered or interfered with, a totalizer attached to fuel pumps to measure the dispensing of fuel for the purpose of evading or circumventing the fuels tax laws of this chapter.

3. Not paying fuels taxes and diverting such tax proceeds for other purposes.

4. Converting fuel tax proceeds by a licensee, or its agents or representatives, for his or their own use, or attempting to convert such fuel tax proceeds with the intent to defraud the Commonwealth.

5. Illegally collecting fuel taxes when not authorized or licensed by the Commissioner to do so.

6. Illegally importing fuel into the Commonwealth.

7. Conspiring with any other person or persons to engage in an act, plan, or scheme to defraud the Commonwealth of fuels tax proceeds.

8. *Using any dyed diesel fuel for a use that the user knows or has reason to know is a taxable use of the fuel, or selling any dyed diesel fuel to a person who the seller knows or has reason to know will use the fuel for a taxable use.*

9. *Altering or attempting to alter the strength or composition of any dye or marker in any dyed diesel fuel.*

§ 58.1-2144. Civil penalties.

A. A penalty, as provided in subsection C of this section, shall be added to the tax under this chapter when any licensee:

1. Fails to submit the monthly report required by this chapter on a timely basis; or

2. Fails to submit the data required by §§ 58.1-2107 and 58.1-2119 in the monthly report; or

3. Fails to pay to the Commissioner on a timely basis the amount of taxes due under this chapter.

B. A penalty, as provided in subsection C of this section, shall be added to the tax due under this chapter when any ~~reseller, bulk user or user~~ person knowingly:

1. Acquires fuel for resale or use for the propulsion of an aircraft or a ~~motor~~ highway vehicle upon which the tax has not been paid; or

2. ~~Fails to report as required by § 58.1-2120; or~~

3. Fails to pay the tax imposed by this chapter on a timely basis.

C. The penalty for the violations listed in subsections A and B of this section shall be equal to ten percent of the tax due or ten dollars, whichever is greater. After imposition of the penalty the amount of the tax and penalty shall bear interest at the rate of one percent per month until the tax and penalty are paid. The Commissioner shall have the power to reduce or waive any penalties provided in this section if the violation is due to reasonable or good cause shown to the satisfaction of the Commissioner.

The ten-dollar minimum penalty levied herein shall be applied only in cases where the monthly report or payment of the tax is not received within the time limit prescribed in this chapter and shall not be considered for audit purposes.

D. The Commissioner may allow overpayments of the motor fuel tax imposed by Article 2 (§ 58.1-2104 et seq.) of this chapter to be considered as credits against the ~~special~~ fuel tax due under Article 3 (§ 58.1-2115 et seq.) of this chapter when imposing the ten percent penalty under this section. The Commissioner may also allow overpayments of the ~~special~~ fuel tax due under Article 3 (§ 58.1-2115 et seq.) of this chapter to be considered as credits against the ~~motor~~ fuel tax.

§ 58.1-2144.1. Civil penalty for improper sale for use, or use of, dyed diesel fuel.

A. *If any person commits any of the following acts, he shall be subject to the civil penalty specified in subsection B:*

1. *Selling or storing any dyed diesel fuel for any use which the person selling or storing knows, or has reason to know, is a taxable use of the fuel; or*

2. *Willfully altering or attempting to alter the strength or composition of any dye or marker in any dyed diesel fuel.*

B. *The amount of penalty for each violation shall be the greater of \$1,000 or \$10 per gallon of dyed*

921 *diesel fuel, based on the maximum storage capacity of the storage tank. Any penalty imposed by this*
922 *section shall be payable by the person committing such act, shall be in addition to the tax due, and*
923 *shall be collectible by the Commissioner in the same manner as if it were a part of the tax imposed.*

924 § 58.1-2145. Civil penalty for jobbers' failure to file report.

925 Notwithstanding subsections B and C of § 58.1-2144, when any ~~bulk user, jobber, reseller, exporter~~
926 ~~or fuel oil distributor~~ fails to file a report within the time prescribed by this chapter, he shall be subject
927 to a penalty of twenty-five dollars for the first offense and seventy-five dollars for any subsequent
928 offense.

929 § 58.1-2145.1. Administrative authority; civil penalty.

930 A. Employees of the Department designated by the Commissioner, upon presenting appropriate
931 credentials and a written notice to the owner, operator, or agent in charge, are authorized to enter any
932 place and to conduct inspections in accordance with this section. Inspections shall be performed in a
933 reasonable manner and at times that are reasonable under the circumstances, taking into consideration
934 the normal business hours of the place to be inspected.

935 B. Inspections may be conducted at any place where taxable fuel or fuel dyes or markers are, or
936 may be, produced, altered, or stored, or at any inspection site where evidence of production, alteration,
937 or storage may be discovered. These places may include, but shall not be limited to, the following: (i)
938 any terminal, (ii) any fuel storage facility that is not a terminal, (iii) any retail fuel facility, and (iv) any
939 designated inspection site. A "designated inspection site" means any state highway inspection station,
940 weigh station, agricultural inspection station, mobile station, or other location designated by the
941 Commissioner to be used as a fuel inspection site.

942 C. Employees of the Department may physically inspect, examine, and otherwise search any tank,
943 reservoir, or other container that can or may be used for the production, storage, or transportation of
944 fuel, fuel dyes or markers. Inspection may also be made of any equipment used for, or in connection
945 with, the production, storage, or transportation of fuel, fuel dyes or markers, including equipment used
946 for the dyeing or marking of fuel. Such employees may also inspect the books and records kept to
947 determine fuel tax liability under this chapter.

948 D. Employees of the Department may detain any vehicle, train or boat for the purpose of inspecting
949 its fuel tanks and storage tanks. Detainment shall be either on the premises under inspection or at a
950 designated inspection site. Detainment may continue for such reasonable period of time as is necessary
951 to determine the amount and composition of the fuel.

952 E. Employees of the Department may take and remove samples of fuel in such reasonable quantities
953 as are necessary to determine its composition.

954 F. Any person refusing to allow an inspection authorized by this section shall be subject to a civil
955 penalty of \$1,000 for each refusal. This penalty shall be imposed in addition to any other penalty or tax
956 that may be imposed as provided in this chapter against such person or any other person liable for the
957 tax under this chapter. All penalties imposed pursuant to this section shall be assessed and collected by
958 the Commissioner in the same manner as if they were part of the tax imposed.

959 § 58.1-2146. Disposition of tax revenues.

960 A. Unless otherwise provided in this section all taxes and fees collected by the Commissioner
961 pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid
962 into the state treasury. Except as provided in § 33.1-23.03:1, no portion of the revenue derived from
963 taxes collected pursuant to §§ 58.1-2701, 58.1-2105 and 58.1-2116, and remaining after authorized
964 refunds for nonhighway use of ~~motor fuel and special fuel fuels~~, shall be used for any purpose other
965 than the construction, reconstruction or maintenance of the roads and projects comprising the State
966 Highway System, the Interstate System and the secondary system of state highways and expenditures
967 directly and necessarily required for such purposes, including the retirement of revenue bonds.

968 Revenues collected under this chapter may be also used for (i) making a contribution towards the
969 construction, reconstruction or maintenance of streets in cities and towns of such sums as may be
970 provided by law; and (ii) expenditures for the operation and maintenance of the Department of
971 Transportation and the Department of Motor Vehicles as may be provided by law.

972 The Governor is hereby authorized to transfer out of such fund an amount necessary for the purpose
973 of inspection of gasoline and motor grease measuring and distributing equipment, and for inspection and
974 analysis of gasoline for purity.

975 B. The tax collected on each gallon of aviation fuel sold and delivered or used in the
976 Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of the
977 special fund shall be disbursed upon order of the Department of Aviation, on warrants of the
978 Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to
979 aviation, for the construction, maintenance and improvement of airports and landing fields to which the
980 public now has or which it is proposed shall have access, and for the promotion of aviation in the
981 interest of operators and the public generally.

982 C. One-half cent of the tax collected on each gallon of fuel on which the refund has been paid at the

rate of seventeen cents per gallon, or in the case of ~~special~~ *diesel* fuel fifteen and one-half cents per gallon, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at the Virginia Polytechnic Institute and State University, the State Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents of the tax collected on each gallon of motor fuel used to propel a commercial boat or ship upon which a refund has been paid shall be paid to the credit of the game protection fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in § 62.1-168 (c), including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of the Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of the Commonwealth used by said commercial boats. Any expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of motor fuels used for the propelling of boats or ships, after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Commonwealth Transportation Board for the purpose of (i) improving the public docks as specified in this section, (ii) improving commercial and sports fisheries in Virginia's tidal waters, (iii) environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) for the purposes set forth in § 33.1-223 a sum as established by the General Assembly.

~~E. A sum sufficient appropriation in the general appropriations act shall be paid into and disbursed from the Alcohol Fuel Production Incentive Program Fund each month as required by Article 3-1 (§ 58.1-2127.1 et seq.) of this chapter and in accordance with the following:~~

~~From July 1, 1990, to June 30, 1992, twenty cents per gallon of anhydrous ethyl alcohol produced during the preceding month and qualifying for the grants set forth in Article 3-1 (§ 58.1-2127.1 et seq.) of this chapter.~~

~~F~~ E. Notwithstanding other provisions of this section, there shall be transferred from moneys collected pursuant to this section to a special fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, an amount equal to one percent of a sum to be calculated as follows: the tax revenues collected pursuant to this chapter, at the tax rates in effect on December 31, 1986, less refunds authorized by this title and less taxes collected for aviation fuels.

§ 58.1-2146.1. Interstate 66 Economic Development Program Fund.

A. There is hereby created in the Department of Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Interstate 66 Economic Development Program Fund (the I-66 Fund), consisting of such funds as may be appropriated by the General Assembly from time to time of an amount determined by reference to the increase in collections in the ~~motor fuel and special~~ fuel taxes and the road tax attributable to the development of a 2,000-acre site in Prince William County with a proffer of a capital investment of at least \$400,000,000. The I-66 Fund shall also include such other funds as may be appropriated by the General Assembly from time to time, and designated for the I-66 Fund, and all interest, dividends and appreciation which may accrue thereto. Any moneys remaining in the I-66 Fund at the end of a biennium shall not revert to the general fund, but shall remain in the I-66 Fund. The amounts in the I-66 Fund shall be used for the construction of state highways including the payment of principal and interest on any Commonwealth of Virginia Transportation Revenue Bonds issued to pay the cost of the projects which comprise the Interstate 66 Economic Development Program as defined in § 33.1-221.1:4.

B. In the event the Commonwealth Transportation Board determines from time to time that funds in the Interstate 66 Economic Development Program Fund are in excess of those required to provide for payment of bonds or other obligations, and the interest thereon, then such excess funds, subject to their appropriation by the General Assembly, may be transferred to the Transportation Trust Fund for allocation purposes pursuant to § 33.1-23.1 A.

§ 59.1-21.16:2. Operation of retail outlet by refiner; apportionment of fuels during periods of shortage; rules and regulations.

A. After July 1, 1979, no refiner of petroleum products shall operate any major brand, secondary

brand, or unbranded retail outlet in the Commonwealth of Virginia with company personnel, a parent company, or under a contract with any person, firm, or corporation, managing a service station on a fee arrangement with the refiner; however, such refiner may operate such retail outlet with the aforesaid personnel, parent, person, firm, or corporation if such outlet is located not less than one and one-half miles, as measured by the most direct surface transportation route, from the nearest retail outlet operated by any franchised dealer; and provided, that once in operation, no refiner shall be required to change or cease operation of any retail outlet by the provisions of this section.

During the period July 1, 1990, through June 30, 1991, no refiner may construct and operate with company personnel as defined in this section any new major brand, secondary brand, or unbranded retail outlet in the Commonwealth of Virginia, except on any property purchased or under option to purchase by March 1, 1990.

B. Every refiner of petroleum products shall apportion all gasoline and ~~special fuels~~ *diesel fuel* among their purchasers during periods of shortages on an equitable basis.

C. No new lease, lease renewal, new supply contract, or new supply contract renewal under this chapter shall impose purchase or sales quotas.

D. The Commissioner of Agriculture and Consumer Services shall adopt regulations (i) defining the circumstances under which a refiner may temporarily operate a previously dealer-operated retail outlet; (ii) providing for the rebuilding or relocation of retail outlets which were producer or refiner operated on July 1, 1979; (iii) requiring each refiner to file a list of retail outlets operated by such refiner and to keep such listing current; (iv) requiring each franchise dealer to file a listing of any retail outlets operated by such franchise dealer, and to keep such list current.

E. The provisions of this section shall not be applicable to retail outlets operated by producers or refiners on July 1, 1979.

§ 62.1-44.34:13. Levy of fee for fund maintenance.

A. In order to generate revenue for the Fund, there shall be imposed a fee of one-fifth of one cent on each gallon of the following fuels sold and delivered or used in the Commonwealth: motor fuel; ~~including aviation motor fuel; diesel fuel; special fuels; #2 fuel oil; and kerosene heating oil, as such terms are defined in § 58.1-2101,~~ except:

1. Motor fuel, ~~diesel fuel special fuels, #2 fuel oil, or kerosene heating oil~~ sold to the United States or its departments, agencies and instrumentalities thereof;
2. Aviation special fuel sold, delivered or used;
3. Natural gas or liquified petroleum gases imported, sold or used in the Commonwealth;
4. Motor fuel sold to a limited dealer or another duly licensed motor fuel dealer; or
5. ~~Special fuels, #2 fuel oil, Diesel fuel or kerosene heating oil~~ sold to a licensed supplier.

Any dealer or supplier, as defined in § 58.1-2101, or any other person licensed with the Department of Motor Vehicles to sell such fuels in the Commonwealth, who collects the fee imposed by this article shall be liable for payment thereof to the Department of Motor Vehicles. A limited dealer shall pay the fee on the number of gallons purchased, invoiced and delivered by the supplying dealer.

B. The fee shall be remitted to the Department of Motor Vehicles in the same manner and subject to the same provisions specified in Article 4 (§ 58.1-2128 et seq.) of Chapter 21 of Title 58.1, except § 58.1-2129 shall not apply.

C. Any person who purchases motor fuel, ~~aviation motor fuel, diesel fuel, special fuels, #2 fuel oil, or kerosene heating oil~~ upon which the fee imposed by this article has been paid shall be entitled to a refund for the amount of the fee paid if such person subsequently transports and delivers such fuel to another state, district or country for sale or use outside the Commonwealth. The application for refund shall be accompanied by a paid ticket or invoice covering the sales of such fuel and shall be filed with the Commissioner of the Department of Motor Vehicles within one year of the date of payment of the fee for which the refund is claimed. A refund shall not be granted pursuant to this article on any fuel which is transported and delivered outside the Commonwealth in the fuel supply tank of a motor vehicle or aircraft.

D. To maintain the Fund at an appropriate operating level, the Commissioner of the Department of Motor Vehicles shall increase the fee to three-fifths of one cent when notified by the Comptroller that the fund has been or is likely in the near future to be reduced below three million dollars, exclusive of fees collected pursuant to § 62.1-44.34:21, and he shall reinstitute the one-fifth of one cent fee when the Comptroller notifies him that the Fund has been restored to six million dollars exclusive of fees collected pursuant to § 62.1-44.34:21.

E. The Comptroller shall report to the Commissioner quarterly regarding the Fund expenditures and Fund total for the preceding quarter.

F. Revenues from such fees, less refunds and administrative expenses, shall be deposited in the Fund and used for the purposes set forth in this article.

2. That §§ 58.1-2108, 58.1-2109.1, 58.1-2120 through 58.1-2120.3 and Article 3.1 (§ 58.1-2127.1 et seq.) of Chapter 21 of Title 58.1 of the Code of Virginia are repealed.

1106 3. That the provisions of this act may result in a net increase in periods of imprisonment in state
1107 correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation
1108 is \$0.

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