

# VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

## CHAPTER 69

*An Act to amend and reenact §§ 58.1-2101, 58.1-2107, 58.1-2111, 58.1-2119, 58.1-2122 and 58.1-2128 of the Code of Virginia, relating to fuels taxes.*

[H 418]

Approved March 4, 1996

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

**1. That §§ 58.1-2101, 58.1-2107, 58.1-2111, 58.1-2119, 58.1-2122 and 58.1-2128 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-2101. Definitions.

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

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

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

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

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

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

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

"Blended fuel" means fuel produced by blending regular gasoline with premium gasoline to produce mid-grade gasoline; fuel produced by blending ethanol into gasoline; fuel produced by blending kerosene into dyed or undyed diesel fuel to reduce pour point; or fuel produced by blending additives into dyed or undyed diesel fuel.

"Blender" means any person that produces blended fuel.

"Blending" means the mixing of one or more petroleum products with another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a highway vehicle, an airplane, or a motorboat. This term does not include blending which occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oils and greases.

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

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

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

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

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

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

"Conduit" means any person licensed to sell petroleum products in another state or jurisdiction who is authorized by that state or jurisdiction to collect Virginia fuels taxes. The person may or may not be licensed to operate as a Virginia fuel tax licensee.

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

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

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

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

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

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

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

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

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

"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.

"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 diesel fuel for the purpose of exempting fuel delivered therein from the fuel tax due to the nonhighway use of such 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 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 highway vehicles or aircraft. The terms shall include motor fuel, diesel fuel, aviation motor fuel, aviation special fuel, and clean special fuels.

"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.

"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" 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 their classifications or uses.

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

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

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

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

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

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

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

"Taxable fuel" means motor fuel, undyed diesel fuel with the exception of kerosene, aviation special fuel, clean special fuels, synthetic motor fuel, synthetic special fuel, ethanol and blends thereof and any other substance blended with any of the foregoing, to include kerosene or #1 fuel oil when used in a highway vehicle.

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

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

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

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

§ 58.1-2107. Reports; payment of tax.

A. On or before the last day of each calendar month, each 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. The quantity of motor fuel on hand on the first and last days of the preceding calendar month;
2. The quantity of motor fuel received, produced, manufactured, refined or compounded during the preceding calendar month;
3. The quantities of motor fuel sold and delivered or used within the Commonwealth during the preceding calendar month; and
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 compounded during the month; and the quantity sold, delivered or used during the month. All such information pertaining to aviation motor fuel shall be separately stated and attached to the monthly report.

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

C. *The Commissioner shall grant a tax deferral to a Virginia licensee for Virginia fuels taxes paid to*

*a conduit when he is satisfied that the tax has been paid to the conduit authorized in and licensed by the jurisdiction in which the fuel purchase was made.*

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

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

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

2. Operating or propelling tractors used for agricultural purposes;

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

4. Operating or propelling 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. The total refunds allowed to any applicant under this subdivision with respect to all motor fuel which is subject to the tax under this chapter shall not, in any fiscal year, exceed the sum of \$2,000;

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

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

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

8. Spraying purposes or for cleaning, dyeing or other commercial use, except in highway vehicles;

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

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

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

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

B. A refund shall be granted in accordance with § 58.1-2112 of any tax paid pursuant to this chapter 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 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 highway vehicle is operated, 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.

*E. Refunds shall be issued by the Commissioner when he determines that a Virginia licensee's tax-paid purchases from a conduit exceed their taxable distribution in Virginia. No refund shall be granted by the Commissioner unless the Department has deposited the licensee's tax payment for the tax period that immediately precedes the request for a refund and that payment has cleared bank processing. Refunds shall be reduced or denied by the Commissioner if the licensee has outstanding taxes, penalties or interest due the Department.*

§ 58.1-2119. Reports; payment of tax.

A. On or before the last day of each calendar month, each supplier of liquid fuel and each aviation consumer shall render to the Commissioner a statement, on forms prepared and furnished by the Commissioner, which shall show: (i) the quantity of diesel 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 diesel 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 diesel fuel used or sold for highway or aviation use during the preceding calendar month. The gallons of diesel fuel used or gallons sold which are not liquid shall be the actual measured gallons. However, diesel 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.

*C. The Commissioner shall grant a tax deferral to a Virginia licensee for Virginia fuels taxes paid to a conduit when he is satisfied that the tax has been paid to the conduit authorized in and licensed by the jurisdiction in which the fuel purchase was made.*

§ 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 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, (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 highway vehicle controlled by a transportation district created under the Transportation District Act of 1964, which 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.

*5. Refunds shall be issued by the Commissioner when he determines that a Virginia licensee's*

*tax-paid purchases from a conduit exceed their taxable distribution in Virginia. No refund shall be granted by the Commissioner unless the Department has deposited the licensee's tax payment for the tax period that immediately precedes the request for a refund and that payment has cleared bank processing. Refunds shall be reduced or denied by the Commissioner if the licensee has outstanding taxes, penalties or interest due the Department.*

§ 58.1-2128. Time for filing and payment.

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

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

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

*Conduits licensed in Virginia who collect Virginia fuels taxes outside of this state must remit the tax as specified in this section and are liable for the payment thereof to the Department of Motor Vehicles. Any late payments of collected Virginia fuels taxes will be subject to penalties and interest pursuant to § 58.1-2144.*

**2. That an emergency exists and this act is in force from its passage.**