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**HOUSE BILL NO. 1198**

Offered January 26, 1998

*A BILL to amend and reenact §§ 3.1-22.5, 46.2-749.3, 46.2-752, 46.2-1177, 58.1-439.1, 58.1-609.1, 58.1-1720, 58.1-1723, 58.1-2402, 58.1-2423.1, 58.1-3506, 58.1-3941, 58.1-3942, and 62.1-44.34:13 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 33.1-221.1:6 and by adding in Title 58.1 a chapter numbered 22, consisting of articles numbered 1 through 10, containing sections numbered 58.1-2200 through 58.1-2290; and to repeal Chapter 21 (§§ 2100 through 2147) of Title 58.1 of the Code of Virginia, relating to fuels taxes; penalties.*

Patron—Rollison

Referred to Committee on Finance

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

**1. That §§ 3.1-22.5, 46.2-749.3, 46.2-752, 46.2-1177, 58.1-439.1, 58.1-609.1, 58.1-1720, 58.1-1723, 58.1-2402, 58.1-2423.1, 58.1-3506, 58.1-3941, 58.1-3942, 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 a section numbered 33.1-221.1:6 and by adding in Title 58.1 a chapter numbered 22, consisting of articles numbered 1 through 10, containing sections numbered 58.1-2200 through 58.1-2290, as follows:**

**§ 3.1-22.5. Virginia Agricultural Foundation Fund.**

There is hereby established in the state treasury a special fund to be designated as the "Virginia Agricultural Foundation Fund" which shall consist of transfers made to it under §§ 3.1-106.22, 3.1-126.12:3, 3.1-275.7, 3.1-828.17, ~~58.1-2111~~58.1-2259 and ~~58.1-2146~~58.1-2289, of other moneys appropriated thereto, gifts and grants, and interest accruing thereon. The fund shall be expended in accordance with the directions of the Virginia Agricultural Council and drawn from the state treasury in the manner provided by law. No part of such fund shall revert to the general fund of the state treasury.

**§ 33.1-221.1:6. 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, and any other funds from private or local sources. 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 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 I-66 Fund are in excess of those required to provide for payment of obligations, 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.*

**§ 46.2-749.3. Special license plates for clean special fuel vehicles.**

*A. The owner of any pickup truck, panel truck, or motor vehicle designed and used for the transportation of passengers, except a motorcycle, which may utilize clean special fuel may purchase special license plates indicating the motor vehicle utilizes clean special fuels. Upon receipt of an application, the Commissioner shall issue special license plates to the owners of such vehicles. Notwithstanding § 46.2-725, for license plates issued under this section prior to July 1, 1998, the Commissioner shall charge only the prescribed cost of state license plates, and no additional fee shall be charged.*

*B. As used in this section, "clean special fuel" means any product or energy source used to propel a highway vehicle, the use of which, compared to conventional gasoline or reformulated gasoline, results in lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide or particulates or any combination thereof. The term includes compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, hythane (a combination of compressed natural gas and hydrogen), and electricity.*

**§ 46.2-752. Taxes and license fees imposed by counties, cities, and towns; limitations on amounts; disposition of revenues; requiring evidence of payment of personal property taxes; prohibiting display of licenses after expiration; failure to display valid local license required by other localities.**

*A. Except as provided in § 46.2-755, counties, cities, and towns may levy and assess taxes and charge license fees on motor vehicles, trailers, and semitrailers. However, none of these taxes and license fees shall be assessed or charged by any county on vehicles owned by residents of any town located in the county when such town constitutes a separate school district if the vehicles are already*

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subject to town license fees and taxes. The amount of the license fee or tax imposed by any county, city, or town on any motor vehicle, trailer, or semitrailer shall not be greater than the amount of the license tax imposed by the Commonwealth on the motor vehicle, trailer, or semitrailer. The license fees and taxes shall be imposed in such manner, on such basis, for such periods, and subject to proration for fractional periods of years, as the proper local authorities may determine. Local licenses may be issued free of charge for any or all of the following:

1. Vehicles powered by clean special fuels as defined in § 58.1-210146.2-749.3, including dual-fuel and bi-fuel vehicles,
2. Vehicles owned by volunteer rescue squads,
3. Vehicles owned by volunteer fire departments,
4. Vehicles owned or leased by active members of volunteer rescue squads,
5. Vehicles owned or leased by active members of volunteer fire departments,
6. Vehicles owned or leased by auxiliary police officers,
7. Vehicles owned or leased by volunteer police chaplains,
8. Vehicles owned by surviving spouses of persons qualified to receive special license plates under § 46.2-739,
9. Vehicles owned or leased by auxiliary deputy sheriffs,
10. Vehicles owned by persons qualified to receive special license plates under § 46.2-739,
11. Vehicles owned by any of the following who served at least ten years in the locality: former members of volunteer rescue squads, former members of volunteer fire departments, former auxiliary police officers, former volunteer police chaplains, and former volunteer special police officers appointed under § 15.1-144. In the case of active members of volunteer rescue squads and volunteer fire departments, applications for such licenses shall be accompanied by written evidence, in a form acceptable to the locality, of their active membership, and no member shall be issued more than one such license free of charge, or

12. All vehicles having a situs for the imposition of licensing fees under this section in the locality.

The governing body of any county, city, or town issuing licenses free of charge under this subsection may by ordinance provide for (i) the limitation, restriction, or denial of such free issuance to an otherwise qualified applicant and (ii) the grounds for such limitation, restriction, or denial.

The situs for the imposition of licensing fees under this section shall in all cases, except as hereinafter provided, be the county, city, or town in which the motor vehicle, trailer, or semitrailer is normally garaged, stored, or parked. If it cannot be determined where the personal property is normally garaged, stored, or parked, the situs shall be the domicile of its owner. In the event the owner of the motor vehicle is a full-time student attending an institution of higher education, the situs shall be the domicile of such student, provided the student has presented sufficient evidence that he has paid a personal property tax on the motor vehicle in his domicile.

B. The revenue derived from all county, city, or town taxes and license fees imposed on motor vehicles, trailers, or semitrailers shall be applied to general county, city, or town purposes.

C. A county, city, or town may require that no motor vehicle, trailer, or semitrailer shall be locally licensed until the applicant has produced satisfactory evidence that all personal property taxes on the motor vehicle, trailer, or semitrailer to be licensed have been paid and satisfactory evidence that any delinquent motor vehicle, trailer, or semitrailer personal property taxes owing have been paid which have been properly assessed or are assessable against the applicant by the county, city, or town. A county, city, or town may also provide that no motor vehicle license shall be issued unless the tangible personal property taxes properly assessed or assessable by that locality on any tangible personal property used or usable as a dwelling titled by the Department of Motor Vehicles and owned by the taxpayer have been paid. Any county and any town within any such county may by agreement require that all personal property taxes assessed by either the county or the town on any vehicle be paid before licensure of such vehicle by either the county or the town.

C1. Any county having a population of at least 24,000, but no more than 24,600, may, by ordinance or resolution adopted after public notice and hearing and, in the case of a county, with the consent of the treasurer, require that no license may be issued under this section unless the applicant has produced satisfactory evidence that all fees, including delinquent fees, payable to such county or local solid waste authority, for the disposal of solid waste pursuant to the Virginia Water and Sewer Authorities Act (§ 15.1-1239 et seq.), have been paid in full. For purposes of this subsection, all fees, including delinquent fees, payable to a county for waste disposal services described herein, shall be paid to the treasurer of such county.

D. The Counties of Arlington, Fairfax, Loudoun, and Prince William and towns within them and any city may require that no motor vehicle, trailer, or semitrailer shall be licensed by that jurisdiction unless all fines owed to the jurisdiction by the owner of the vehicle, trailer, or semitrailer for violation of the jurisdiction's ordinances governing parking of vehicles have been paid. The provisions of this subsection shall not apply to vehicles owned by firms or companies in the business of renting motor vehicles.

E. If in any county imposing license fees and taxes under this section, a town therein imposes like fees and taxes on vehicles of owners resident in the town, the owner of any vehicle subject to the fees or taxes shall be entitled, on the owner's displaying evidence that he has paid the fees or taxes, to receive a credit on the fees or taxes imposed by the county to the extent of the fees or taxes he has paid to the town. Nothing in this section shall deprive any town now imposing these licenses and taxes from increasing them or deprive any town not now imposing them from hereafter doing so, but subject to the limitations provided in subsection D of this section. The governing body of any county and the governing body of any town in that county wherein each imposes the license tax herein provided may provide mutual agreements so that not more than one license plate or decal in addition to the state plate shall be required.

F. Notwithstanding the provisions of subsection E of this section, in a consolidated county wherein a tier-city exists, the tier-city may, in accordance with the provisions of the agreement or plan of consolidation, impose license fees and taxes under this section in addition to those fees and taxes imposed by the county, provided that the combined county and tier-city rates do not exceed the maximum provided in subsection A of this section. No credit shall be allowed on the fees or taxes imposed by the county for fees or taxes paid to the tier-city, except as may be provided by the consolidation agreement or plan. The governing body of any county and the governing body of any tier-city in said county wherein each imposes the license tax herein may provide by mutual agreement that no more than one license plate or decal in addition to the state license plate shall be required.

G. Any county, city, or town may by ordinance provide that it shall be unlawful for any owner or operator of a motor vehicle, trailer, or semitrailer to fail to obtain and display the local license required by any ordinance of the county, city or town in which the vehicle is registered or to display upon a motor vehicle, trailer, or semitrailer any such local license after its expiration date. The ordinance may provide that a violation shall constitute a misdemeanor the penalty for which shall not exceed that of a Class 4 misdemeanor and may, in the case of a motor vehicle registered to a resident of the locality where such vehicle is registered, authorize the issuance by local law-enforcement officers of citations, summonses, parking tickets, or uniform traffic summonses for violations. Any such ordinance may also provide that a violation of the ordinance by the registered owner of the vehicle may not be discharged by payment of a fine except upon presentation of satisfactory evidence that the required license has been obtained.

H. Except as provided by subsections E and F, no vehicle shall be subject to taxation under the provisions of this section in more than one jurisdiction.

I. Purchasers of new or used motor vehicles shall be allowed at least a ten-day grace period, beginning with the date of purchase, during which to pay license fees charged by local governments under authority of this section.

J. Beginning October 1, 1992, the treasurer or director of finance of any county, city, or town may enter into an agreement with the Commissioner whereby the Commissioner will refuse to issue or renew any vehicle registration of any applicant therefor who owes to such county, city or town any delinquent tangible personal property tax levied with respect to such vehicle in excess of \$50. Before being issued any vehicle registration or renewal of such license or registration by the Commissioner, the applicant must first satisfy all such delinquent taxes and present evidence satisfactory to the Commissioner that all such delinquent taxes have been paid in full. The Commissioner shall charge a reasonable fee to cover the costs of such enforcement action, and the treasurer or director of finance may add the cost of this fee to the delinquent tax bill. The treasurer or director of finance of any county, city, or town seeking to collect delinquent taxes through the withholding of registration or renewal thereof by the Commissioner as provided for in this subsection shall notify the Commissioner in the manner provided for in his agreement with the Commissioner and supply to the Commissioner information necessary to identify the debtor whose registration or renewal is to be denied. Any agreement entered into pursuant to the provisions of this subsection shall provide the debtor notice of the intent to deny renewal of registration at least thirty days prior to the expiration date of a current vehicle registration. For the purposes of this subsection, notice by first-class mail to the registrant's address as maintained in the records of the Department of Motor Vehicles shall be deemed sufficient.

K. The governing bodies of any two or more counties, cities, or towns may enter into compacts for the regional enforcement of local motor vehicle license requirements. The governing body of each participating jurisdiction may by ordinance require the owner or operator of any motor vehicle, trailer, or semitrailer to display on his vehicle a valid local license issued by another county, city, or town that is a party to the regional compact, provided that the owner or operator is required by the jurisdiction of situs, as provided in § 58.1-3511, to obtain and display such license. The ordinance may provide that a violation shall constitute a misdemeanor the penalty for which shall not exceed that of a Class 4 misdemeanor. Any such ordinance may also provide that a violation of the ordinance by the owner of the vehicle may not be discharged by payment of a fine except upon presentation of satisfactory

183 evidence that the required license has been obtained.

184 § 46.2-1177. Emissions inspection program.

185 The Director shall administer an emissions inspection program. Such program shall require biennial  
186 inspections of motor vehicles at official emissions inspection stations in accordance with this article and  
187 may require additional inspections of motor vehicles that have been shown by on-road testing to exceed  
188 emissions standards established by the Board.

189 The emissions inspections required in § 46.2-1178 shall not apply to any:

190 1. Vehicle powered by a clean special fuel as defined in § ~~58.1-2101~~46.2-749.3, provided provisions  
191 of the federal Clean Air Act permit such exemption for vehicles powered by a clean special fuel;

192 2. Motorcycle;

193 3. Vehicle which, at the time of its manufacture was not designed to meet emissions standards set or  
194 approved by the federal government;

195 4. Antique motor vehicle as defined in § 46.2-100 and licensed pursuant to § 46.2-730; or

196 5. Vehicle for which no testing standards have been adopted by the Board.

197 § 58.1-439.1. Clean fuel vehicle job creation tax credit.

198 A. For taxable years beginning on or after January 1, 1996, through December 31, 2006, a  
199 corporation shall be eligible for a credit against the tax levied pursuant to § 58.1-400 equal to \$700 for  
200 each job which is created in either (i) the manufacture of components for vehicles designed to operate  
201 on a clean special fuel, (ii) the manufacture of components used to convert vehicles designed to operate  
202 on gasoline or diesel fuel to operate on clean special fuel, (iii) the conversion of vehicles designed to  
203 operate on gasoline or diesel fuel to operate on clean special fuel, or (iv) the manufacture of vehicles  
204 designed to operate on clean special fuel. The credit shall be allowed in the taxable year in which the  
205 job is created and in each of the two succeeding years in which the job is continued.

206 B. For purposes of this section, "clean special fuel" shall have the same meaning as provided in  
207 § ~~58.1-2101~~46.2-749.3, and "vehicle" shall have the same meaning as provided in U.S. Internal Revenue  
208 Code §§ 179A and 30.

209 C. For purposes of this section, "job" shall mean the full-time employment of an individual in  
210 Virginia by a corporation for at least forty hours per week during at least forty weeks during the  
211 calendar year whose primary work activity is related directly to either (i) the manufacture of the major  
212 components of the energy storage, energy supply or engine, motor, and power train mechanisms unique  
213 to a vehicle fueled by clean special fuels; (ii) the manufacture of components uniquely used to convert  
214 vehicles designed to operate on gasoline or diesel fuel to operate on clean special fuel; (iii) the  
215 conversion of vehicles designed to operate on gasoline or diesel fuel to operate on clean special fuel; or  
216 (iv) the manufacture of vehicles designed to operate on clean special fuel.

217 D. To qualify for the tax credit provided in subsection A of this section, a corporation must  
218 demonstrate (i) that a job was created during the taxable year for which the credit is claimed or was  
219 continued from the previous taxable year in which a credit was claimed and (ii) the employment level in  
220 jobs defined in subsection C of this section in the taxable year for which the credit is first claimed has  
221 increased in comparison to the previous taxable year.

222 E. Any tax credit not used in the taxable year of job creation or continuation may be carried over for  
223 credit against the corporation's income tax in the five succeeding taxable years until the total credit  
224 amount is used.

225 F. In case of a partnership or limited liability company, the credit shall be allocated to the corporate  
226 partners or corporate members in proportion to their ownership or interest in the partnership or limited  
227 liability company.

228 G. A corporation shall not be eligible for a tax credit pursuant to this section if such corporation is  
229 allowed a major business facility job tax credit pursuant to § 58.1-439.

230 § 58.1-609.1. Governmental and commodities exemptions.

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

233 1. Fuels which are subject to the tax imposed by Chapter ~~2422~~ (~~§ 58.1-2100~~58.1-2200 et seq.) of this  
234 title. Persons who are refunded any such fuel tax shall, however, be subject to the tax imposed by this  
235 chapter, unless such taxes would be specifically exempted pursuant to any provision of this section.

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

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

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

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

243 6. Motor fuels, ~~diesel fuel~~, and ~~clean special~~alternative fuels for use in a ~~boat or ship~~, commercial  
244 ~~watercraft~~ upon which a fuel tax is refunded pursuant to § ~~58.1-2113~~ or § ~~58.1-2122~~58.1-2259.

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 §§ 24.2-404 through 24.2-407.

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.)

13. From July 1, 1995, through June 30, 2000, tangible personal property for use or consumption by any community diversion program or successor program as established in accordance with the provisions of Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1.

§ 58.1-1720. Sales tax on fuel in certain transportation districts.

A. There is hereby levied, in addition to all other taxes imposed on fuels subject to tax under Chapter 21-22 (§ 58.1-2100 et seq.) of this title, in every county or city which is a member of any transportation district in which a rapid heavy rail commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass transportation system are owned, operated or controlled, by an agency or a commission as defined in § 15.1-1344 15.2-4502, or in any transportation district which is subject to § 15.1-1357 (b) (6) 15.2-4515 C and which is contiguous to the Northern Virginia Transportation District, a sales tax of two percent of the retail price of such fuels sold within such county or city. As used in this section, "retail sale" means a sale to a consumer or to any person for any purpose other than resale.

B. The tax imposed under this section shall be subject to the provisions of the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.), except that the exemption provided for motor vehicle fuels under § 58.1-609.13, and the bracket system provided in such act, shall not be applicable.

§ 58.1-1723. Refund of motor vehicle fuel sales tax.

Anyone who purchases fuel (i) that is taxed under the provisions of § 58.1-1720 and (ii) upon which a refund is granted for motor fuels taxes paid pursuant to the provisions of Article 6 (§ 58.1-2259 et seq.) of this title, Chapter 21, Article 2 (§ 58.1-2104 et seq.) and Article 3 (§ 58.1-2115 et seq.) 22 of this title, may file a claim for a refund of taxes paid under this article within thirty days after receipt of a refund under the above chapters article on forms and under regulations adopted by the Department of Taxation.

## CHAPTER 22.

### FUELS TAX.

#### Article 1.

#### General Provisions.

§ 58.1-2200. Title; nature of tax.

A. This chapter shall be known and may be cited as the "Virginia Fuels Tax Act."

B. All taxes levied under this chapter are imposed upon the ultimate consumer but are precollected as prescribed in this chapter. The levies and assessments imposed on licensees as provided in this chapter are imposed on them as agents of the Commonwealth for the precollection of the tax. The taxes levied under this chapter shall be collected and paid at those times, in the manner, and by those persons specified in this chapter.

§ 58.1-2201. Definitions.

As used in this chapter, unless the context requires otherwise:

"Alternative fuel" means a combustible gas, liquid or other energy source that can be used to generate power to operate a highway vehicle and that is not a motor fuel.

"Assessment" means a written determination by the Department of the amount of taxes owed by a taxpayer. Assessments made by the Department shall be deemed to be made when a written notice of assessment is delivered to the taxpayer by the Department or is mailed by certified or registered mail to the taxpayer at the last known address appearing in the Commissioner's files.

"Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation jet fuel in any fiscal year and is licensed pursuant to Article 2 (§ 58.1-2204 et seq.) of this chapter.

"Aviation fuel" means aviation gasoline or aviation jet fuel.

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

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

308 *"Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a*  
309 *de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used*  
310 *as a fuel in a highway vehicle.*

311 *"Blender" means a person who produces blended fuel outside the terminal transfer system.*

312 *"Bonded aviation jet fuel" means aviation jet fuel held in bonded storage under United States*  
313 *Customs Law and delivered into a fuel supply tank of aircraft operated by certificated air carriers on*  
314 *international flights.*

315 *"Bonded importer" means a person, other than a supplier, who imports, by transport truck or*  
316 *another means of transfer outside the terminal transfer system, motor fuel removed from a terminal*  
317 *located in another state in any of the following circumstances: (i) the state from which the fuel is*  
318 *imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that*  
319 *state's rate or the rate of the destination state; (ii) the supplier of the fuel is not an elective supplier; or*  
320 *(iii) the supplier of the fuel is not a permissive supplier.*

321 *"Bulk end-user" means a person who maintains storage facilities for motor fuel and uses part or all*  
322 *of the stored fuel to operate a highway vehicle, watercraft, or aircraft.*

323 *"Bulk end-user of alternative fuel" means a person who maintains storage facilities for alternative*  
324 *fuel and uses part or all of the stored fuel to operate a highway vehicle.*

325 *"Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from*  
326 *which motor fuel may be removed at a rack.*

327 *"Commercial watercraft" means a watercraft employed in the business of commercial fishing,*  
328 *transporting persons or property for compensation or hire, or any other trade or business unless the*  
329 *watercraft is used in an activity of a type generally considered entertainment, amusement, or recreation.*

330 *"Commissioner" means the Commissioner of the Department.*

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

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

337 *"Designated inspection site" means any state highway inspection station, weigh station, agricultural*  
338 *inspection station, mobile station, or other location designated by the Commissioner to be used as a fuel*  
339 *inspection site.*

340 *"Destination state" means the state, territory, or foreign country to which motor fuel is directed for*  
341 *delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the*  
342 *purpose of resale or use. The term shall not include a tribal reservation of any recognized American*  
343 *Indian Tribe.*

344 *"Diesel fuel" means any liquid that is suitable for use as a fuel in a diesel-powered highway vehicle*  
345 *or watercraft. The term shall include #1 fuel oil, #2 fuel oil, and kerosene, but shall not include*  
346 *gasoline or aviation jet fuel.*

347 *"Distributor" means a person who acquires motor fuel from a supplier or from another distributor*  
348 *for subsequent sale.*

349 *"Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C.*  
350 *§ 4082.*

351 *"Elective supplier" means a supplier who (i) is required to be licensed in the Commonwealth and (ii)*  
352 *elects to collect the tax due the Commonwealth on motor fuel that is removed by that supplier at a*  
353 *terminal located in another state and has Virginia as its destination state.*

354 *"End seller" means the person who sells fuel to the ultimate user of the fuel.*

355 *"Export" means to obtain motor fuel in Virginia for sale or other distribution in another state,*  
356 *territory, or foreign country. Motor fuel delivered out-of-state by or for the seller constitutes an export*  
357 *by the seller, and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the*  
358 *purchaser.*

359 *"Fuel" includes motor fuel and alternative fuel.*

360 *"Fuel alcohol" means methanol or fuel grade ethanol.*

361 *"Fuel alcohol provider" means a person who (i) produces fuel alcohol or (ii) imports fuel alcohol*  
362 *outside the terminal transfer system by means of a marine vessel, a transport truck, or a railroad tank*  
363 *car.*

364 *"Gasohol" means a blended fuel composed of gasoline and fuel grade ethanol.*

365 *"Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and*  
366 *are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have*  
367 *an American Society for Testing Materials octane number of less than seventy-five as determined by the*

motor method; (ii) a petroleum product component of gasoline, such as naphtha, reformat, or toluene; (iii) gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an aircraft motor.

"Governmental entity" means (i) the Commonwealth or any political subdivision thereof or (ii) the United States or its departments, agencies, and instrumentalities.

"Gross gallons" means an amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

"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 a self-propelled vehicle designed for use on a highway.

"Import" means to bring motor fuel into Virginia by any means of conveyance other than in the fuel supply tank of a highway vehicle. Motor fuel delivered into Virginia from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into Virginia from out-of-state by or for the purchaser constitutes an import by the purchaser.

"In-state-only supplier" means (i) a supplier who is required to have a license and who elects not to collect the tax due the Commonwealth on motor fuel that is removed by that supplier at a terminal located in another state and has Virginia as its destination state or (ii) a supplier who does business only in Virginia.

"Licensee" means any person licensed by the Commissioner pursuant to Article 2 (§ 58.1-2204 et seq.) of this chapter or § 58.1-2244.

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

"Motor fuel" means gasoline, diesel fuel, blended fuel, and aviation fuel.

"Motor fuel transporter" means a person who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel.

"Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of sixty degrees Fahrenheit and a pressure of 14.7 pounds per square inch.

"Occasional importer" means any of the following persons who import motor fuel by any means outside the terminal transfer system: (i) a distributor who imports motor fuel on an average basis of no more than one load per month during a calendar year, (ii) a bulk end-user who acquires motor fuel for import from a bulk plant and is not required to be licensed as a bonded importer, or (iii) a distributor who imports motor fuel for use in a race car.

"Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a supplier's license under this chapter.

"Person" means any individual; firm; cooperative; association; corporation; trust; business trust; syndicate; partnership; joint venture; receiver; trustee in bankruptcy; club, society or other group or combination acting as a unit; or public body, including but not limited to the Commonwealth, any other state, and any agency, department, institution, political subdivision or instrumentality of the Commonwealth or any other state.

"Position holder" means a person who holds an inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds an "inventory position in motor fuel" when he has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

"Principal" means (i) if a partnership, all its partners; (ii) if a corporation, all its officers, directors, and controlling direct or indirect owners; and (iii) if a limited liability company, all its members.

"Provider of alternative fuel" means a person who (i) acquires alternative fuel for sale or delivery to a bulk end-user or a retailer; (ii) maintains storage facilities for alternative fuel, part or all of which the person sells to someone other than a bulk end-user or a retailer to operate a highway vehicle; (iii) sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle; or (iv) imports alternative fuel into Virginia, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for sale or use by that person to operate a highway vehicle.

"Rack" means a mechanism for delivering motor fuel from a refinery, terminal, or bulk plant into a transport truck, railroad tank car, or other means of transfer that is outside the terminal transfer system.

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

"Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

429 *"Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical*  
430 *transfer to a transport truck or other means of conveyance outside the terminal transfer system is*  
431 *complete upon delivery into the means of conveyance.*

432 *"Retailer" means a person who (i) maintains storage facilities for motor fuel and (ii) sells the fuel at*  
433 *retail or dispenses the fuel at a retail location.*

434 *"Retailer of alternative fuel" means a person who (i) maintains storage facilities for alternative fuel*  
435 *and (ii) sells the fuel at retail or dispenses the fuel at a retail location to operate a highway vehicle.*

436 *"Supplier" means (i) a position holder, (ii) a person who receives motor fuel pursuant to a two-party*  
437 *exchange, or (iii) a fuel alcohol provider. A licensed supplier includes a licensed elective supplier and*  
438 *licensed permissive supplier.*

439 *"System transfer" means a transfer (i) of motor fuel within the terminal transfer system or (ii) of fuel*  
440 *grade ethanol by transport truck or railroad tank car.*

441 *"Tank wagon" means a straight truck or straight truck/trailer combination designed or used to carry*  
442 *fuel and having a capacity of less than 6,000 gallons.*

443 *"Tank wagon importer" means a person who imports, only by means of a tank wagon, motor fuel*  
444 *that is removed from a terminal or a bulk plant located in another state.*

445 *"Terminal" means a motor fuel storage and distribution facility (i) to which a terminal control*  
446 *number has been assigned by the Internal Revenue Service, (ii) to which motor fuel is supplied by*  
447 *pipeline or marine vessel, and (iii) from which motor fuel may be removed at a rack.*

448 *"Terminal operator" means a person who owns, operates, or otherwise controls a terminal.*

449 *"Terminal transfer system" means a motor fuel distribution system consisting of refineries, pipelines,*  
450 *marine vessels, and terminals, and which is a "bulk transfer/terminal system" under 26 C.F.R. Part*  
451 *48.4081-1.*

452 *"Transmix" means (i) the buffer or interface between two different products in a pipeline shipment or*  
453 *(ii) a mix of two different products within a refinery or terminal that results in an off-grade mixture.*

454 *"Transport truck" means a tractor truck/semitrailer combination designed or used to transport*  
455 *cargoes of motor fuel over a highway.*

456 *"Trustee" means a person who (i) is licensed as a supplier, an elective supplier, or a permissive*  
457 *supplier and receives tax payments from and on behalf of a licensed or unlicensed distributor, importer,*  
458 *exporter, or other person pursuant to § 58.1-2231 or (ii) is licensed as a provider of alternative fuel and*  
459 *receives tax payments from and on behalf of a bulk end-user of alternative fuel, retailer of alternative*  
460 *fuel or other person pursuant to § 58.1-2252.*

461 *"Two-party exchange" means a transaction in which fuel is transferred from one licensed supplier to*  
462 *another licensed supplier pursuant to an exchange agreement, which transaction (i) includes a transfer*  
463 *from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on*  
464 *the records of the terminal operator and (ii) is completed prior to removal of the product from the*  
465 *terminal by the receiving exchange partner.*

466 *"Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental*  
467 *Protection Agency or Internal Revenue Service fuel-dyeing requirements.*

468 *"Use" means the actual consumption or receipt of motor fuel by any person into a highway vehicle,*  
469 *aircraft, or watercraft.*

470 *"Watercraft" means any vehicle used on waterways.*

471 *§ 58.1-2202. Regulations; forms.*

472 *The Commissioner may promulgate regulations and shall prescribe forms as shall be necessary to*  
473 *effectuate and enforce this chapter.*

474 *§ 58.1-2203. Exchange of information; penalties.*

475 *A. The Commissioner may, upon request from the officials entrusted with enforcing the fuels tax laws*  
476 *of any other state, forward to such officials any information that the Commissioner may have relative to*  
477 *the production, manufacture, refining, compounding, receipt, sale, use, transportation, or shipment by*  
478 *any person of such fuel.*

479 *B. The Commissioner may enter into written agreements with duly constituted tax officials of other*  
480 *states and of the United States for the inspection of tax returns, the making of audits, and the exchange*  
481 *of information relating to taxes administered by the Department pursuant to this chapter.*

482 *C. The Commissioner may divulge tax information to the Tax Commissioner, any commissioner of the*  
483 *revenue, director of finance or other authorized collector of county, city, or town taxes who, for the*  
484 *performance of his official duties, requests the same in writing setting forth the reasons for such*  
485 *request.*

486 *D. Any person to whom tax information is divulged pursuant to this section shall be subject to the*  
487 *prohibitions and penalties prescribed in § 58.1-3 as though that person were a tax official as defined in*  
488 *that section.*

489 *Article 2.*

490 *Motor Fuel Licensing.*



§ 58.1-2204. *Persons required to be licensed.*

A. A person shall obtain a license before conducting the activities of:

1. A refiner, who shall be licensed as a supplier;
2. A supplier;
3. A terminal operator;
4. An importer;
5. An exporter;
6. A blender;
7. A motor fuel transporter;
8. A bulk end-user of undyed diesel fuel;
9. A retailer of undyed diesel fuel; or
10. An aviation consumer.

B. A person who is engaged in more than one activity for which a license is required shall have a separate license for each activity, except as provided in subsection C.

C. 1. A person who is licensed as a supplier shall not be required to obtain a separate license for any other activity for which a license is required and shall be considered to have a license as a distributor.

2. A person who is licensed as an occasional importer or a tank wagon importer shall not be required to obtain a license as a distributor.

3. A person who is licensed as a distributor shall not be required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or permissive supplier. Such licensed distributor shall not be required to obtain a separate license as an exporter.

4. A person who is licensed as a distributor or a blender shall not be required to obtain a separate license as a motor fuel transporter if he does not transport motor fuel for others for hire.

§ 58.1-2205. *Types of importers; qualification for license as an importer.*

A. An applicant for a license as an importer shall indicate whether he is applying for a license as a bonded importer, occasional importer, or tank wagon importer.

B. A person shall not be licensed as more than one type of importer. A bulk end-user who imports motor fuel from a terminal of a supplier who is not an elective or a permissive supplier shall be licensed as a bonded importer. A bulk end-user who imports motor fuel from a bulk plant and is not required to be licensed as a bonded importer shall be licensed as an occasional importer. A bulk end-user who imports motor fuel only from a terminal of an elective or a permissive supplier shall not be required to be licensed as an importer.

§ 58.1-2206. *Persons who may obtain a license.*

A person who conducts the activities of a distributor or a permissive supplier may obtain a license issued by the Commissioner for that activity.

§ 58.1-2207. *Restrictions on qualification for license as a distributor.*

A bulk end-user of motor fuel shall not be licensed as a distributor unless he also acquires motor fuel from a supplier or from another distributor for subsequent sale.

§ 58.1-2208. *License application procedure.*

A. To obtain a license under this article, an applicant shall file an application with the Commissioner on a form provided by the Commissioner. An application shall include the applicant's name, address, federal employer identification number, and any other information required by the Commissioner.

B. An applicant for a license as a refiner, supplier, terminal operator, importer, blender, bulk end-user of undyed diesel fuel, retailer of undyed diesel fuel, distributor, or aviation consumer shall satisfy the following requirements:

1. If the applicant is a corporation, the applicant shall either be incorporated in the Commonwealth or authorized to transact business in the Commonwealth;

2. If the applicant is a limited liability company, the applicant shall be organized in the Commonwealth or authorized to transact business in the Commonwealth;

3. If the applicant is a limited partnership, the applicant shall either be formed in the Commonwealth or authorized to transact business in the Commonwealth; or

4. If the applicant is an individual or a general partnership, the applicant shall designate an agent for service of process and provide the agent's name and address.

C. An applicant for a license as a refiner, supplier, terminal operator, blender, or permissive supplier shall have a federal certificate of registry issued under 26 U.S.C. § 4101 that authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant who is required to have a federal certificate of registry shall include the registration number of the certificate on the application for a license under this section. An applicant for a license as an importer, an exporter, or a distributor who has a federal certificate of registry issued under 26

552 U.S.C. § 4101 shall include the registration number of the certificate on the application for a license  
553 under this section.

554 D. An applicant for a license as an importer or distributor shall list on the application each state  
555 from which the applicant intends to import motor fuel and, if required by a state listed, shall be licensed  
556 or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be  
557 licensed or registered, the applicant shall provide the applicant's license or registration number in that  
558 state. A licensee who intends to import motor fuel from a state not listed on his application for an  
559 importer's license or a distributor's license shall provide the Commissioner written notice of such action  
560 before importing motor fuel from that state. The notice shall include the information that is required on  
561 the license application.

562 E. An applicant for a license as an exporter shall designate an agent located in Virginia for service  
563 of process and provide the agent's name and address. An applicant for a license as an exporter or  
564 distributor shall list on the application each state to which the applicant intends to export motor fuel  
565 received in Virginia by means of a transfer that is outside the terminal transfer system and, if required  
566 by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed  
567 requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or  
568 registration number in that state. A licensee who intends to export motor fuel to a state not listed on his  
569 application for an exporter's license or a distributor's license shall provide the Commissioner written  
570 notice of such action before exporting motor fuel to that state. The notice shall include the information  
571 required on the license application.

572 § 58.1-2209. Supplier election to collect tax on out-of-state removals.

573 A. An applicant for a license as a supplier may elect on the application to collect the tax due the  
574 Commonwealth on motor fuel that is removed by the supplier at a terminal located in another state and  
575 has Virginia as its destination state. The Commissioner shall provide for this election on the application  
576 form. A supplier who makes the election allowed by this section is an elective supplier. A supplier who  
577 does not make the election allowed by this section shall be an in-state-only supplier. A supplier who  
578 does not make the election on the application for a supplier's license may make the election later by  
579 completing an election form provided by the Commissioner. A supplier who has not made the election  
580 shall not act as an elective supplier for motor fuel that is removed at a terminal in another state and  
581 has Virginia as its destination state.

582 B. A supplier who makes the election allowed by this section shall comply with all of the following  
583 with respect to motor fuel that is removed by the supplier at a terminal located in another state and has  
584 Virginia as its destination state:

585 1. Collect the tax due the Commonwealth on the fuel;

586 2. Waive any defense that the Commonwealth lacks jurisdiction to require the supplier to collect the  
587 tax due the Commonwealth on the fuel under this chapter;

588 3. Report and pay the tax due on the fuel in the same manner as if the removal had occurred at a  
589 terminal located in Virginia;

590 4. Keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal  
591 had occurred at a terminal located in Virginia; and

592 5. Report sales by the supplier to a person who is not licensed in the state where the removal  
593 occurred if the destination state is Virginia.

594 C. A supplier who makes the election allowed by this section (i) acknowledges that the  
595 Commonwealth imposes the requirements listed in subsection B of this section on the supplier under its  
596 general police power and (ii) submits to the jurisdiction of the Commonwealth only for purposes related  
597 to the administration of this chapter.

598 § 58.1-2210. Permissive supplier election to collect tax on out-of-state removals.

599 A. An out-of-state supplier who is not required to be licensed under this chapter may elect to obtain  
600 a license and thereby become a permissive supplier. An out-of-state supplier who does not make this  
601 election shall not act as a permissive supplier for motor fuel that is removed at a terminal in another  
602 state and has Virginia as its destination state.

603 B. An out-of-state supplier who elects to be licensed as a permissive supplier shall comply with (i)  
604 the same requirements imposed on a supplier and (ii) all of the following with respect to motor fuel that  
605 is removed by the permissive supplier at a terminal located in another state and has Virginia as its  
606 destination state:

607 1. Collect the tax due the Commonwealth on the fuel;

608 2. Waive any defense that the Commonwealth lacks jurisdiction to require the supplier to collect the  
609 tax due the Commonwealth on the motor fuel under this chapter;

610 3. Report and pay the tax due on the fuel in the same manner as if the removal had occurred at a  
611 terminal located in Virginia;

612 4. Keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal  
613 had occurred at a terminal located in Virginia; and

5. Report sales by the supplier to a person who is not licensed in the state where the removal occurred if the destination state is Virginia.

C. An out-of-state supplier who makes the election allowed by this section (i) acknowledges that the Commonwealth imposes the requirements listed in subsection B on the supplier under its general police power and (ii) submits to the jurisdiction of the Commonwealth only for purposes related to the administration of this chapter.

§ 58.1-2211. Bond, certificate of deposit, or letter of credit requirements.

A. An applicant for a license as a refiner, terminal operator, supplier, importer, blender, permissive supplier, distributor, or aviation consumer shall file with the Commissioner a bond, certificate of deposit, or irrevocable letter of credit. The bond, certificate of deposit, or irrevocable letter of credit shall be conditioned upon compliance with the requirements of this chapter, be payable to the Commonwealth, and be in the form required by the Commissioner. The amount of the bond, certificate of deposit, or irrevocable letter of credit shall be as follows:

1. For an applicant for a license as a (i) refiner, (ii) terminal operator, (iii) supplier who is a position holder or a person who receives motor fuel pursuant to a two-party exchange, (iv) bonded importer, or (v) permissive supplier, the amount shall be \$2,000,000; and

2. For an applicant for a license as a (i) supplier who is a fuel alcohol provider but is neither a position holder nor a person who receives motor fuel pursuant to a two-party exchange; (ii) occasional importer; (iii) tank wagon importer; (iv) distributor; (v) blender; or (vi) aviation consumer, the amount shall be three times the applicant's average expected monthly tax liability under this chapter, as determined by the Commissioner. The amount shall not be less than \$2,000 nor more than \$300,000.

B. An applicant for a license both as a distributor and as a bonded importer shall file only the bond, certificate of deposit, or irrevocable letter of credit required of a bonded importer. An applicant for two or more of the licenses listed in subdivision A 2 may file one bond, certificate of deposit, or irrevocable letter of credit that covers the combined liabilities of the applicant under all the activities, in which event the amount of the bond, certificate of deposit, or irrevocable letter of credit for the combined activities shall not exceed \$300,000.

C. When notified to do so by the Commissioner, a person who has filed a bond, certificate of deposit, or an irrevocable letter of credit and who holds a license listed in subdivision A 2 shall file an additional bond, certificate of deposit, or irrevocable letter of credit in the amount required by the Commissioner. The person shall file the additional bond, certificate of deposit, or irrevocable letter of credit within thirty days after receiving the notice from the Commissioner. However, the amount of the initial bond, certificate of deposit, or irrevocable letter of credit and any additional bond, certificate of deposit, or irrevocable letter of credit filed by the licensee shall not exceed \$300,000.

§ 58.1-2212. Grounds for denial of license.

The Commissioner may refuse to issue a license under this article to an applicant if (i) the applicant or (ii) any principal of the applicant that is a business entity has:

1. Had a license or registration issued under prior law or this chapter canceled by the Commissioner for cause;

2. Had a motor fuel license or registration issued by another state canceled for cause;

3. Had a federal Certificate of Registry issued under § 4101 of the Internal Revenue Code, or a similar federal authorization, revoked;

4. Been convicted of any offense involving fraud or misrepresentation; or

5. Been convicted of any other offense that indicates that the applicant may not comply with this chapter if issued a license.

§ 58.1-2213. Issuance of license.

Upon approval of an application, the Commissioner shall issue to the applicant a license and a duplicate copy of the license for each place of business of the applicant. A supplier's license shall indicate the category of the supplier. A licensee shall display the license issued under this chapter in a conspicuous place at each place of business of the licensee. A license shall not be transferable and shall remain in effect until surrendered or canceled.

§ 58.1-2214. Notice of discontinuance, sale or transfer of business.

A. A licensee who discontinues in the Commonwealth the business for which the license was issued shall notify the Commissioner in writing of such discontinuance and shall surrender the license to the Commissioner. The notice shall state the effective date of the discontinuance and, if the licensee has transferred the business or otherwise relinquished control to another person by sale or otherwise, the date of the sale or transfer and the name and address of the person to whom the business is transferred or relinquished. The notice shall also include any other information required by the Commissioner.

B. If the licensee is a supplier, all taxes for which the supplier is liable under this chapter but are not yet due shall be due on the date of the discontinuance. If the supplier has transferred the business to another person and does not give the notice required by this section, the person to whom the

business was transferred shall be liable for the amount of any tax owed by the supplier to the Commonwealth on the date the business was transferred. The liability of the person to whom the business was transferred shall not exceed the value of the property acquired from the supplier.

§ 58.1-2215. License cancellation.

A. The Commissioner may cancel the license of any person licensed under this article, upon written notice sent by registered mail to the licensee's last known address appearing in the Commissioner's files, for any of the following reasons:

1. Filing by the licensee of a false report of the data or information required by this chapter;
2. Failure, refusal, or neglect of the licensee to file a report required by this chapter;
3. Failure of the licensee to pay the full amount of the tax required by this chapter;
4. Failure of the licensee to keep accurate records of the quantities of motor fuel received, produced, refined, manufactured, compounded, sold, or used in Virginia;
5. Failure to file a new or additional bond or irrevocable letter of credit upon request of the Commissioner pursuant to § 58.1-2211;
6. Conviction of the licensee or a principal of the licensee for any act prohibited under this chapter;
7. Failure, refusal, or neglect of a licensee to comply with any other provision of this chapter or any regulation promulgated pursuant to this chapter; or
8. A change in the ownership or control of the business.

B. Upon cancellation of any license for any cause listed in subsection A, the tax levied under this chapter shall become due and payable on (i) all untaxed motor fuel held in storage or otherwise in the possession of the licensee and (ii) all motor fuel sold, delivered, or used prior to the cancellation on which the tax has not been paid.

C. The Commissioner may cancel any license upon the written request of the licensee.

D. Upon cancellation of any license and payment by the licensee of all taxes due, including all penalties accruing due to any failure by the licensee to comply with the provisions of this chapter, the Commissioner shall cancel and surrender the bond, certificate of deposit, or irrevocable letter of credit filed by such licensee.

§ 58.1-2216. Records and lists of license applicants and licensees.

A. The Commissioner shall keep a record of (i) applicants for a license under this chapter; (ii) persons to whom a license has been issued under this chapter; and (iii) persons holding a current license issued under this chapter, by license category.

B. The Commissioner may, as he deems appropriate, provide a list of licensees to any licensee, as well as to any unlicensed distributor who requests a copy. The list shall state the name, account number, and business address of each licensee on the list and may include other information determined appropriate by the Commissioner.

### Article 3.

#### Motor Fuel Tax; Liability.

§ 58.1-2217. Taxes levied; rate.

A. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline.

B. There is hereby levied a tax at the rate of sixteen cents per gallon on diesel fuel.

C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that contains diesel fuel shall be taxed at the rate levied on diesel fuel.

D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation gasoline shall be liable for the tax at the rate of seventeen and one-half cents per gallon, along with any penalties and interest that may accrue.

E. There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of sixteen cents per gallon, along with any penalties and interest that may accrue.

F. In accordance with § 62.1-44:34:13, a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth.

§ 58.1-2218. Point of imposition of motor fuels tax.

The tax levied pursuant to § 58.1-2217 is imposed at the point that the motor fuel is:

1. Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax

imposed by 26 U.S.C. § 4081;

2. Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by 26 U.S.C. § 4081;

3. Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in Virginia and would have been subject to the federal excise tax imposed by 26 U.S.C. § 4081 if it had been removed at a terminal or bulk plant rack in Virginia instead of being imported;

4. If the motor fuel is fuel grade ethanol, (i) removed from a terminal or another storage and distribution facility, unless the removed fuel is received by a supplier for subsequent sale, or (ii) imported into Virginia outside the terminal transfer system by a means other than a marine vessel, a transport truck, or a railroad tank car;

5. If the motor fuel is blended fuel, made within Virginia or imported into Virginia; or

6. Transferred within the terminal transfer system and, upon transfer, is subject to the federal excise tax imposed by 26 U.S.C. § 4081.

§ 58.1-2219. Liability for tax on removals from a refinery or terminal.

A. The tax imposed pursuant to § 58.1-2218 at the point that motor fuel is removed from a refinery in Virginia shall be paid by the refiner.

B. The tax imposed pursuant to § 58.1-2218 at the point that motor fuel is removed by a system transfer from a terminal in Virginia shall be paid by the position holder for the fuel; however, if the position holder is not the terminal operator, the terminal operator and position holder shall be jointly and severally liable for the tax.

C. The tax imposed pursuant to § 58.1-2218 at the point that motor fuel is removed at a terminal rack in Virginia shall be payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is first received by an unlicensed distributor, the unlicensed distributor and the supplier of the fuel shall be jointly and severally liable for payment of the tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier as required by this chapter, then (i) the terminal operator, (ii) the person selling the fuel, and (iii) the person removing the fuel shall be jointly and severally liable for payment of the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel shall be jointly and severally liable for payment of the tax due on the fuel. If the motor fuel is removed for export by an unlicensed exporter, the exporter shall be liable for payment of the tax on the fuel at the rate specified in § 58.1-2217 and at the rate of the destination state, and liability for the tax shall attach when the Commissioner assesses the unlicensed exporter for the tax.

§ 58.1-2220. Liability for tax on imports.

A. The tax imposed pursuant to § 58.1-2218 at the point that motor fuel is imported by a system transfer (i) to a refinery shall be payable by the refiner or (ii) to a terminal shall be jointly and severally payable by the person importing the fuel and by the terminal operator.

B. The tax imposed pursuant to § 58.1-2218 at the point that motor fuel is removed from a terminal rack located in another state and has Virginia as its destination state shall be payable:

1. If the importer of the fuel is a licensed supplier in Virginia and the fuel is removed for the supplier's own account for use in Virginia, by the supplier;

2. If the supplier of the fuel is licensed in Virginia as an elective supplier or a permissive supplier, by the importer of the fuel to the supplier as trustee; or

3. If subdivisions 1 and 2 do not apply, by the importer of the fuel when filing a return with the Commissioner.

C. The tax imposed pursuant to § 58.1-2218 at the point that motor fuel is removed from a bulk plant located in another state shall be payable by the person that imports the fuel.

§ 58.1-2221. Liability for tax on fuel grade ethanol.

The tax imposed pursuant to § 58.1-2218 at the point that fuel grade ethanol (i) is removed from a storage facility shall be payable by the fuel alcohol provider or (ii) is imported to Virginia shall be payable by the importer.

§ 58.1-2222. Liability for tax on blended fuel.

A. The tax imposed pursuant to § 58.1-2218 at the point that blended fuel is made in Virginia shall be payable by the blender. The number of gallons of blended fuel on which the tax is payable is the difference between the number of gallons of blended fuel made and the number of gallons of previously taxed motor fuel used to make the blended fuel.

B. The tax imposed pursuant to § 58.1-2218 at the point that blended fuel is imported to Virginia shall be payable by the importer.

C. The following blended fuel shall be considered to have been made by the supplier of gasoline or undyed diesel fuel used in the blend:

1. An in-line-blend made by combining a liquid with gasoline or undyed diesel fuel as the fuel is

798 delivered at a terminal rack into the motor fuel storage compartment of a transport truck or a tank  
799 wagon; and

800 2. A kerosene splash-blend made when kerosene is delivered at a terminal into a motor fuel storage  
801 compartment of a transport truck or a tank wagon and undyed diesel fuel is also delivered at that  
802 terminal into the same storage compartment, if the buyer of the kerosene notified the supplier before or  
803 at the time of delivery that the kerosene would be used to make a splash-blend.

804 § 58.1-2223. Liability for tax on fuel transferred within terminal transfer system.

805 The tax imposed pursuant to § 58.1-2218 at the point that motor fuel is transferred within the  
806 terminal transfer system shall be jointly and severally payable by the supplier of the fuel, the person  
807 receiving the fuel, and the terminal operator of the terminal at which the fuel was transferred.

808 § 58.1-2224. Tax on unaccounted for motor fuel losses; liability.

809 A. There is hereby levied a tax at the rate specified by § 58.1-2217 annually on taxable unaccounted  
810 for motor fuel losses at a terminal. "Taxable unaccounted for motor fuel losses" means the number of  
811 gallons of unaccounted for motor fuel losses that exceed one-half of one percent of the number of net  
812 gallons removed from the terminal during the year by a system transfer or at the terminal rack.  
813 "Unaccounted for motor fuel losses" means the difference between (i) the amount of motor fuel in  
814 inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the  
815 terminal during the year and (ii) the amount of motor fuel in inventory at the terminal at the end of the  
816 year plus the amount of motor fuel removed from the terminal during the year. Accounted for motor fuel  
817 losses which have been approved by the Commissioner or motor fuel losses constituting part of a  
818 transmix shall not constitute unaccounted for motor fuel losses.

819 B. The terminal operator whose motor fuel is unaccounted for shall be liable for the tax imposed by  
820 this section, together with a penalty equal to the amount of tax payable. Motor fuel received by a  
821 terminal operator and not shown on an informational return filed by the terminal operator with the  
822 Commissioner as having been removed from the terminal shall be presumed to be unaccounted for  
823 motor fuel losses. A terminal operator may rebut this presumption by establishing that motor fuel  
824 received at a terminal, but not shown on an informational return as having been removed from the  
825 terminal, was an accounted for loss or constitutes part of a transmix.

826 § 58.1-2225. Backup tax; liability.

827 A. There is hereby levied a tax at the rate specified in § 58.1-2217 on the following:

828 1. Dyed diesel fuel that is used to operate a highway vehicle for a taxable use other than a use  
829 allowed under 26 U.S.C. § 4082;

830 2. Motor fuel that was allowed an exemption from the motor fuel tax and was then used for a  
831 taxable purpose; and

832 3. Motor fuel that is used to operate a highway vehicle after an application for a refund of tax paid  
833 on the motor fuel is made or allowed on the basis that the motor fuel was used for an off-highway  
834 purpose.

835 B. The operator of a highway vehicle that uses motor fuel that is taxable under this section is liable  
836 for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the  
837 operator of the highway vehicle and the motor carrier shall be jointly and severally liable for the tax. If  
838 the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel  
839 would be used for a purpose that is taxable under this section, the operator of the highway vehicle and  
840 the end seller shall be jointly and severally liable for the tax.

841 C. An end seller of dyed diesel fuel shall be deemed to have known or had reason to know that the  
842 fuel would be used for a purpose that is taxable under this section if the end seller delivered the fuel  
843 into a storage facility that was not marked as required by § 58.1-2279.

844 D. The tax liability imposed by this section shall be in addition to any other penalty imposed  
845 pursuant to this chapter.

846 § 58.1-2226. Exemptions from tax.

847 No tax shall be levied or collected pursuant to this chapter on:

848 1. Motor fuel sold and delivered to a governmental entity for the exclusive use by the governmental  
849 entity. This exemption shall not apply with respect to fuel sold or delivered to any person operating  
850 under contract with the governmental entity;

851 2. Motor fuel sold and delivered to a nonprofit charitable organization which is exempt from  
852 taxation under § 501 (c) (3) of the Internal Revenue Code and which is organized and operated  
853 exclusively for the purpose of providing charitable, long-distance, advanced life-support, air ambulance  
854 services for low-income medical patients in the Commonwealth, for the exclusive use of such  
855 organization in the operation of an aircraft;

856 3. Bonded aviation jet fuel;

857 4. Dyed diesel fuel; or

858 5. Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer  
859 system, from a terminal for export, if the supplier of the motor fuel collects tax on the fuel at the rate of

the motor fuel's destination state.

§ 58.1-2227. Sales of aviation jet fuel to licensed aviation consumers.

A licensed aviation consumer required to file a monthly return and remit taxes to the Department pursuant to § 58.1-2230 shall not be required to remit tax to a supplier or distributor for purchases of aviation jet fuel.

§ 58.1-2228. Exempt access cards; exempt access codes.

A. A licensed distributor, licensed importer or, in the case of aviation jet fuel, a licensed aviation consumer shall only remove motor fuel from a terminal by means of a supplier-issued exempt access card or exempt access code if (i) the motor fuel will be resold to a governmental entity or an organization exempt from tax under subdivision 2 of § 58.1-2226 for a purpose that is exempt from the tax or (ii) the aviation jet fuel will be used by the aviation consumer or resold to a licensed aviation consumer. The use of such exempt access card or exempt access code shall constitute a representation by the licensed distributor, licensed importer or licensed aviation consumer that the removal of the motor fuel is permitted. A supplier shall be authorized to rely on this representation. A licensed distributor or licensed importer who does not resell motor fuel removed from a terminal by means of an exempt access card or exempt access code to an exempt governmental unit or an organization exempt from tax under subdivision 2 of § 58.1-2226 is liable for any tax due on the fuel. A licensed distributor or licensed importer who does not resell aviation jet fuel removed from a terminal by means of an exempt access card or exempt access code to a licensed aviation consumer is liable for any tax due on the aviation jet fuel.

B. A supplier who issues to, or authorizes another person to issue to, another person an exempt access card or an exempt access code that enables the person to buy motor fuel at retail without paying the tax on the fuel shall determine if the person is exempt from the tax or, in the case of aviation jet fuel, is a licensed aviation consumer allowed to purchase aviation jet fuel without payment of tax. A supplier is liable for tax due on motor fuel purchased at retail by use of an exempt access card or an exempt access code issued to a person who is not exempt from the tax or, in the case of aviation jet fuel, is not a licensed aviation consumer allowed to purchase aviation jet fuel without payment of tax.

C. A person to whom an exempt access card or exempt access code is issued for use at a terminal or at retail is liable for any tax due on fuel purchased with the exempt access card or exempt access code for a purpose that is not exempt. A person who misuses an exempt access card or exempt access code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel. The provisions of this subsection shall apply to the misuse of a card or code that allows a person to purchase aviation jet fuel without paying the tax.

D. The tax liability imposed by this section shall be in addition to any other penalty imposed pursuant to this chapter.

§ 58.1-2229. Removals by out-of-state bulk end-user.

An out-of-state bulk end-user shall not remove motor fuel from a terminal in the Commonwealth for use in the state in which the bulk end-user is located unless the bulk end-user is licensed under this chapter as an exporter.

#### Article 4.

#### Payment and Reporting of Tax on Motor Fuel.

§ 58.1-2230. When tax return and payment are due.

A. The tax on motor fuel levied by this chapter that is required to be remitted to the Commonwealth shall be payable to the Commonwealth not later than the date on which the return is due. A return is due annually, quarterly, or monthly, as specified in this section. A return shall be filed with the Commissioner and be in the form and contain the information required by the Commissioner.

1. An annual return shall be postmarked or received by the Department within forty-five days after the end of each calendar year. An annual return covers tax liabilities that accrue in the calendar year preceding the date the return is due.

2. A quarterly return shall be postmarked or received by the Department by the last day of the month that follows the end of a calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar quarter preceding the date the return is due.

3. A monthly return of a person other than an occasional importer shall be (i) postmarked by the last day of the month succeeding the month for which the return is due or (ii) received by the Department by the fifth day of the second month succeeding the month for which the return is due. A monthly return of an occasional importer shall be postmarked or received by the Department by the third day of the month following the month for which the return is due. However, a monthly return of the tax for the month of May of a person other than an occasional importer shall be (i) postmarked by June 25 or (ii) received by the Commissioner by the last business day the Department is open for business in June. A monthly return covers tax liabilities that accrue in the month for which the return is due.

921 4. If a tax return due date falls on a Saturday, Sunday, or a state or banking holiday, the return  
922 shall be postmarked or received by the Department by midnight of the next business day the Department  
923 is open for business. This provision shall not apply to a return of the tax for the month of May.

924 5. A return shall be deemed postmarked if it carries the official cancellation mark of the United  
925 States Postal Service or other postal or delivery service.

926 B. A terminal operator shall file an annual return for the tax on unaccounted for motor fuel losses  
927 levied pursuant to § 58.1-2224.

928 C. A licensed importer who removes fuel at a terminal rack of a permissive or an elective supplier  
929 and a licensed distributor shall file a quarterly return under § 58.1-2234 to reconcile exempt sales.

930 D. The following persons shall file a monthly return as provided in subdivision A 3:

931 1. A refiner;

932 2. A supplier;

933 3. A bonded importer;

934 4. A blender;

935 5. A tank wagon importer;

936 6. An aviation consumer; and

937 7. A person incurring liability under § 58.1-2225 for the backup tax on motor fuel.

938 E. An occasional importer shall file a monthly return by the third day of the month following the  
939 month for which the return is due. However, an occasional importer is not required to file a return if  
940 all the motor fuel imported by the importer in a reporting period was removed at a terminal located in  
941 another state and the supplier of the fuel is an elective supplier or a permissive supplier.

942 F. All suppliers and bonded importers required to remit the tax shall remit the tax due by electronic  
943 fund transfer acceptable to the Commissioner.

944 G. Notwithstanding the provisions of any other section in this chapter, the Commissioner may  
945 require all or certain licensees to file tax returns electronically.

946 § 58.1-2231. Remittance of tax to supplier.

947 A. A distributor shall remit tax due on motor fuel removed at a terminal rack to the supplier of the  
948 fuel. A licensed distributor shall not be required to remit the tax to the supplier until the date the  
949 supplier is required to pay the tax to the Commonwealth or to another state. All tax payments received  
950 by a supplier shall be held in trust by the supplier until the supplier remits the tax payment to the  
951 Commonwealth or to another state, and the supplier shall constitute the trustee for such tax payments.  
952 The date by which an unlicensed distributor is required to remit the tax to a supplier shall be governed  
953 by agreement between the supplier and the unlicensed distributor.

954 B. An exporter shall remit tax due on motor fuel removed at a terminal rack to the supplier of the  
955 fuel. The date by which an exporter shall remit tax to a supplier shall be governed by the law of the  
956 destination state of the exported motor fuel.

957 C. A licensed importer shall remit tax due on motor fuel removed at a terminal rack of a permissive  
958 or an elective supplier to the supplier of the fuel. A licensed importer who removes fuel from a terminal  
959 rack of a permissive or an elective supplier shall not be required to remit the tax to the supplier until  
960 the date the supplier is required to pay the tax to the Commonwealth.

961 D. The method by which a distributor, licensed exporter or licensed importer is required to remit tax  
962 to a supplier shall be governed by agreement between the supplier and the distributor, licensed exporter  
963 or licensed importer.

964 E. The license of a licensed distributor, exporter or importer who fails to pay the full amount of tax  
965 required by this chapter is subject to cancellation as provided in § 58.1-2215.

966 § 58.1-2232. Notice of cancellation or reissuance of licenses; effect of notice.

967 A. If the Commissioner cancels the license of a distributor, importer, or aviation consumer, the  
968 Commissioner shall notify all suppliers of the cancellation. If the Commissioner issues a license to a  
969 distributor, importer or aviation consumer whose license was previously canceled, the Commissioner  
970 shall notify all suppliers of the issuance.

971 B. A supplier who sells motor fuel to a distributor or aviation consumer after receiving notice from  
972 the Commissioner that the Commissioner has canceled the distributor's or aviation consumer's license  
973 shall be jointly and severally liable with the distributor or aviation consumer for any tax due on motor  
974 fuel the supplier sells to the distributor or aviation consumer after receiving the notice; however, the  
975 supplier shall not be liable for tax due on motor fuel sold to a previously unlicensed distributor or  
976 aviation consumer after the supplier receives notice from the Commissioner that the Commissioner has  
977 issued another license to the distributor or aviation consumer.

978 C. If the Commissioner cancels the license of a supplier, the Commissioner shall notify all licensed  
979 distributors, exporters, importers and aviation consumers of the cancellation. If the Commissioner issues  
980 a license to a supplier whose license was previously canceled, the Commissioner shall notify all licensed  
981 distributors, exporters, importers and aviation consumers of the issuance.

982 D. A licensed distributor, exporter, importer, or aviation consumer who purchases motor fuel from a



supplier after receiving notice from the Commissioner that the Commissioner has canceled the supplier's license shall be jointly and severally liable with the supplier for any tax due on motor fuel purchased from the supplier after receiving the notice; however, the licensed distributor, exporter, importer, or aviation consumer shall not be liable for tax due on motor fuel purchased from a previously unlicensed supplier after the licensee receives notice from the Commissioner that the Commissioner has issued another license to the supplier.

§ 58.1-2233. Deductions; percentage discount.

A. A licensed importer who removes motor fuel from a terminal rack of a permissive or an elective supplier or licensed distributor may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel that the licensee received from the supplier and resold to a governmental entity, or resold to an organization described in subdivision 2 of § 58.1-2226 for use in the operation of an aircraft if, when removing the fuel, the licensee used an exempt access card or exempt access code specified by the supplier to notify the supplier of the licensee's intent to resell the fuel in an exempt sale.

B. A licensed importer who removes motor fuel from a terminal rack of a permissive supplier, an elective supplier, or a licensed distributor may deduct from the amount of tax otherwise payable to a supplier the amount calculated on aviation jet fuel that the licensee received from the supplier and resold to a licensed aviation consumer if, when removing the fuel, the licensee used an exempt access card or exempt access code specified by the supplier to notify the supplier of the licensee's intent to resell the aviation jet fuel to a licensed aviation consumer.

C. A licensed distributor who pays the tax due a supplier by the date the supplier is required to remit the tax to this Commonwealth may deduct from the amount due a discount of one-half of one percent of the amount of tax payable. A licensed importer who (i) removes motor fuel from a terminal rack of a permissive or an elective supplier and (ii) pays the tax due to the supplier by the date the supplier is required to remit the tax to the Commonwealth may deduct from the amount due a discount of one-half of one percent of the amount of tax payable. A supplier shall not directly or indirectly deny this discount to a licensed distributor or licensed importer who pays the tax due the supplier by the date the supplier is required to remit the tax to the Commonwealth.

§ 58.1-2234. Quarterly reconciling returns.

A. A licensed distributor or a licensed importer who deducts exempt sales under subsection A of § 58.1-2233 or sales of aviation jet fuel to a licensed aviation consumer under subsection B of § 58.1-2233 when paying tax to a supplier shall file a quarterly reconciling return for the exempt sales and sales to a licensed aviation consumer. The return shall list the following information and any other information required by the Commissioner:

1. The number of gallons for which a deduction was taken during the quarter, by supplier;
2. The number of gallons sold in exempt sales during the quarter, by type of sale, and the purchasers of the fuel in the exempt sales; and
3. The number of gallons of aviation jet fuel sold without collection of the tax during the quarter, and the purchasers of the fuel.

B. If the number of gallons for which a licensed distributor or licensed importer takes a deduction during a quarter exceeds the number of exempt gallons sold or, in the case of aviation jet fuel, the number of gallons sold without collection of the tax, the licensed distributor or licensed importer shall pay tax on the difference at the rate imposed by § 58.1-2217. The licensed distributor or licensed importer shall not be allowed a percentage discount on any tax payable under this subsection.

C. If the number of gallons for which a licensed distributor or licensed importer takes a deduction during a quarter is less than the number of exempt gallons sold or, in the case of aviation jet fuel, is less than the number of gallons sold without collection of the tax, the Commissioner shall refund the amount of tax paid on the difference. The Commissioner shall reduce the amount of the refund by the amount of the percentage discount received on the fuel.

§ 58.1-2235. Information required on return filed by supplier.

A return of a supplier shall list all of the following information and any other information required by the Commissioner:

1. The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by type of fuel, seller, point of origin, destination state, and carrier;
2. The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of fuel, person receiving the fuel, terminal code, and carrier;
3. The number of gallons of motor fuel removed during the month for export, sorted by type of fuel, person receiving the fuel, terminal code, destination state, and carrier;
4. The number of gallons of motor fuel removed during the month from a terminal located in another state for conveyance to Virginia, as indicated on the shipping document for the fuel, sorted by type of fuel, person receiving the fuel, terminal code, and carrier;

1044 5. The number of gallons of motor fuel the supplier sold during the month to the following, sorted by  
1045 type of fuel, exempt entity, person receiving the fuel, terminal code, and carrier:  
1046 a. A governmental entity whose use of fuel is exempt from the tax;  
1047 b. A licensed aviation consumer purchasing aviation jet fuel;  
1048 c. A licensed distributor or importer who resold the motor fuel to a governmental unit whose use of  
1049 fuel is exempt from the tax, as indicated by the distributor or importer;  
1050 d. A licensed distributor or importer who resold aviation jet fuel to a licensed aviation consumer as  
1051 indicated by the distributor or importer;  
1052 e. A licensed exporter who resold the motor fuel to a person whose use of the fuel is exempt from  
1053 tax in the destination state, as indicated by the exporter;  
1054 f. A nonprofit charitable organization which is exempt from taxation under § 501 (c) (3) of the  
1055 Internal Revenue Code and which is organized and operated exclusively for the purpose of providing  
1056 charitable, long-distance, advanced life-support, air ambulance services for low-income medical patients  
1057 in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft; and  
1058 g. A licensed distributor or importer who resold the motor fuel to a nonprofit charitable organization  
1059 which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and which is organized  
1060 and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support,  
1061 air ambulance services for low-income medical patients in the Commonwealth, for the exclusive use of  
1062 such organization in the operation of an aircraft; and  
1063 6. The amount of discounts allowed under subsection C of § 58.1-2233 on motor fuel sold during the  
1064 month to licensed distributors or licensed importers.  
1065 § 58.1-2236. Deductions and discounts allowed a supplier when filing a return.  
1066 A. When a supplier files a return, the supplier may deduct from the amount of tax payable with the  
1067 return the amount of tax any (i) licensed distributor or (ii) licensed importer who removed the motor  
1068 fuel on which the tax is due from a terminal of an elective or a permissive supplier, owes the supplier  
1069 but failed to remit to the supplier. A supplier shall not be liable for tax such a licensee owes the  
1070 supplier but fails to pay. If such licensee pays the tax owed to a supplier after the supplier deducts the  
1071 amount of such tax on a return, the supplier shall remit the payment to the Commissioner with the next  
1072 monthly return filed subsequent to receipt of the tax.  
1073 B. A supplier who timely files a return with the payment due may deduct, from the amount of tax  
1074 payable with the return, an administrative discount of one-tenth of one percent of the amount of tax  
1075 payable to the Commonwealth, not to exceed \$5,000 per month.  
1076 C. A supplier who sells motor fuel directly to an unlicensed distributor or to a bulk end-user,  
1077 retailer, or user of the fuel may take the same percentage discount on the fuel that a licensed distributor  
1078 may take under subsection C of § 58.1-2233 when making deferred payments of tax to the supplier.  
1079 D. When filing a return, a supplier who issues or authorizes the issuance of an exempt access card  
1080 or an exempt access code to a person that enables the person to buy motor fuel at retail without paying  
1081 tax on the fuel may deduct the amount of tax imposed on fuel purchased with the exempt access card or  
1082 exempt access code. The amount of tax imposed on fuel purchased at retail with an exempt access card  
1083 or exempt access code is the amount that was imposed on the fuel when it was delivered to the retailer  
1084 of the fuel.  
1085 § 58.1-2237. Duties of supplier as trustee.  
1086 A. All tax payments due to the Commonwealth received by a supplier pursuant to § 58.1-2231 shall  
1087 be held by the supplier as trustee in trust for the Commonwealth, and a supplier has a fiduciary duty to  
1088 remit to the Commissioner the amount of tax received by the supplier. A supplier shall be liable for the  
1089 taxes paid to him.  
1090 B. A supplier shall notify a licensed distributor, licensed exporter, or licensed importer who received  
1091 motor fuel from the supplier during a reporting period of the number of taxable gallons received. The  
1092 supplier shall give this notice after the end of each reporting period and before the licensee is required  
1093 to remit to the supplier the amount of tax due on the fuel.  
1094 C. A supplier of motor fuel at a terminal shall notify the Commissioner within ten business days  
1095 after a return is due of any licensed distributors, licensed exporters, or licensed importers who did not  
1096 pay the tax due the supplier when the supplier filed his return. The notice shall be transmitted to the  
1097 Commissioner in the form required by the Commissioner.  
1098 D. A supplier who receives a payment of tax shall not apply the payment to a debt that the person  
1099 making the payment owes the supplier for motor fuel purchased from the supplier.  
1100 § 58.1-2238. Returns and discounts of importers.  
1101 A. A monthly return of a bonded importer, occasional importer or tank wagon importer shall contain  
1102 the following information concerning motor fuel imported during the period covered by the return and  
1103 any other information required by the Commissioner:  
1104 1. The number of gallons of imported motor fuel acquired from a supplier who collected the tax due  
1105 the Commonwealth on the fuel;

2. The number of gallons of imported motor fuel acquired from a supplier who did not collect the tax due the Commonwealth on the fuel, listed by source state, supplier, and terminal;

3. The import authorization number of each import that is reported under subdivision 2 and was removed from a terminal; and

4. If he is an occasional importer or tank wagon importer, the number of gallons of imported motor fuel acquired from a bulk plant, listed by bulk plant.

B. An importer shall not deduct an administrative discount under subsection C of § 58.1-2233 from the amount remitted with a return. An importer who imports motor fuel received from an elective supplier or a permissive supplier may deduct the percentage discount allowed by subsection C of § 58.1-2233 when remitting tax to the supplier, as trustee, for payment to the Commonwealth. An importer who imports motor fuel received from a supplier who is not an elective supplier or a permissive supplier shall not deduct the percentage discount allowed by subsection C of § 58.1-2233 when filing a return for the tax due.

§58.1-2239. Returns and discounts of aviation consumers.

A. A monthly return of an aviation consumer shall state the number of gallons of aviation jet fuel acquired from a supplier or distributor who did not collect the tax due the Commonwealth on the fuel, listed by source state, supplier or distributor, and terminal or other source, with respect to aviation jet fuel purchased during the period covered by the return and any other information required by the Commissioner.

B. An aviation consumer shall be allowed a credit for aviation jet fuel purchased on which tax has already been paid. The amount of such credit shall not exceed the amount of fuel taxes due from such aviation consumer, nor shall the credit be carried forward to the next fiscal year.

§ 58.1-2240. Informational returns of terminal operators.

A terminal operator shall file a monthly informational return with the Commissioner that shows the amount of motor fuel received or removed from the terminal during the month. The return is due by the twenty-fifth day of the month following the month covered by the return. The return shall contain the following information and any other information required by the Commissioner:

1. The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel;

2. The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel; and

3. The number of gallons of motor fuel gained or lost at the terminal during the month.

§ 58.1-2241. Informational returns of motor fuel transporters.

A. A person who transports, by pipeline, marine vessel, railroad tank car, or transport truck, motor fuel that is imported into Virginia or exported from Virginia shall file a monthly informational return with the Commissioner that shows motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor who is not required to be licensed as a motor fuel transporter.

B. The return required by this section is due by the twenty-fifth day of the month following the month covered by the return. The return shall contain the following information and any other information required by the Commissioner:

1. The name and address of each person from whom the transporter received motor fuel outside Virginia for delivery in Virginia, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel; and

2. The name and address of each person from whom the transporter received motor fuel in Virginia for delivery outside Virginia, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

§ 58.1-2242. Return of distributors; exports.

A. A distributor who exports motor fuel from a bulk plant located in Virginia shall file a monthly return with the Commissioner identifying the exports. The return is due by the twenty-fifth day of the month following the month covered by the return. The return shall serve as a claim for a refund by the distributor for tax paid to the Commonwealth on the exported motor fuel.

B. The return shall contain the following information and any other information required by the Commissioner:

1. The number of gallons of motor fuel exported during the month;

2. The destination state of the motor fuel exported during the month; and

3. A certification that the distributor has paid to the destination state of the motor fuel exported during the month, or will timely pay, the amount of tax due that state on the fuel.

§ 58.1-2243. Use of name and account number on return.

When a transaction with a person licensed under this chapter is required to be reported on a return, the return must state the licensee's name and account number as stated on the lists compiled by the

1167 Commissioner under § 58.1-2216.

1168 Article 5.

1169 Provisions Applicable to Alternative Fuels.

1170 § 58.1-2244. Persons required to be licensed.

1171 A person shall obtain a license before conducting the activities of:

1172 1. A provider of alternative fuel;

1173 2. A bulk end-user of alternative fuel;

1174 3. A retailer of alternative fuel; or

1175 4. A person who fuels his highway vehicle from his private source, if the alternative fuels tax on  
1176 alternative fuel used in the vehicle has not been paid.

1177 § 58.1-2245. License application procedure.

1178 To obtain a license under this article, an applicant shall file an application with the Commissioner  
1179 on a form provided by the Commissioner. The application shall include the applicant's name, address,  
1180 federal employer identification number, and any other information required by the Commissioner.

1181 § 58.1-2246. Bond, certificate of deposit, or letter of credit requirements.

1182 A. An applicant for a license as a (i) provider of alternative fuel, (ii) retailer of alternative fuel or  
1183 bulk end-user of alternative fuel who stores highway and nonhighway alternative fuel in the same  
1184 storage tank, or (iii) retailer of alternative fuel or a bulk end-user of alternative fuel who wishes to  
1185 defer the remittance of tax to the provider until the date the provider of alternative fuel is required to  
1186 pay the tax to the Commonwealth, shall file with the Commissioner a bond, certificate of deposit, or an  
1187 irrevocable letter of credit.

1188 B. The amount of the bond, certificate of deposit, or irrevocable letter of credit shall be three times  
1189 the applicant's average expected monthly tax liability under this article, as determined by the  
1190 Commissioner. The amount shall not be less than \$2,000 nor more than \$300,000. An applicant who is  
1191 also required to file a bond, a certificate of deposit, or an irrevocable letter of credit under § 58.1-2211  
1192 to obtain a license as a distributor of motor fuel may file a single bond, certificate of deposit, or  
1193 irrevocable letter of credit under § 58.1-2211 for the combined amount and shall not be required to file  
1194 a bond, certificate of deposit or irrevocable letter of credit for more than \$300,000 for the combined  
1195 amount.

1196 C. A bond, certificate of deposit, or irrevocable letter of credit filed under this section shall be  
1197 conditioned upon compliance with this chapter, be payable to the Commonwealth, and be in the form  
1198 required by the Commissioner. The Commissioner may require a bond, a certificate of deposit, or an  
1199 irrevocable letter of credit issued under this section to be adjusted in accordance with the procedure set  
1200 out in subsection C of § 58.1-2211 for adjusting a bond, certificate of deposit, or irrevocable letter of  
1201 credit filed by a distributor of motor fuel.

1202 § 58.1-2247. Issuance, denial or cancellation of license.

1203 A. The Commissioner shall issue a license to each applicant whose application is approved. A  
1204 license shall not be transferable and remains in effect until surrendered or canceled.

1205 B. The Commissioner may refuse to issue a license under this article to an applicant if (i) the  
1206 applicant or (ii) any principal of the applicant that is a business entity has:

1207 1. Had a license or registration issued under prior law or this chapter canceled by the  
1208 Commissioner for cause;

1209 2. Had an alternative fuel license or registration issued by another state canceled for cause;

1210 3. Had a federal Certificate of Registry issued under § 4101 of the Internal Revenue Code, or a  
1211 similar federal authorization, revoked;

1212 4. Been convicted of any offense involving fraud or misrepresentation; or

1213 5. Been convicted of any other offense that indicates that the applicant may not comply with this  
1214 chapter if issued a license.

1215 C. The Commissioner may cancel the license of any person licensed under this article, upon written  
1216 notice sent by registered mail to the licensee's last known address appearing in the Commissioner's files,  
1217 for any of the following reasons:

1218 1. Filing by the licensee of a false report of the data or information required by this article;

1219 2. Failure, refusal, or neglect of the licensee to comply with any provision of this chapter or any  
1220 regulation promulgated pursuant to this chapter;

1221 3. Failure of the licensee to pay the full amount of the tax required by this article;

1222 4. Failure of the licensee to keep accurate records of the quantities of alternative fuel received,  
1223 produced, refined, manufactured, compounded, sold, or used in the Commonwealth;

1224 5. Failure to file a new or additional bond or irrevocable letter of credit upon request of the  
1225 Commissioner pursuant to § 58.1-2246; or

1226 6. Conviction of the licensee or a principal of the licensee for any prohibited act listed under this  
1227 article.

1228 D. Upon cancellation of any license for any cause listed in subsection C, the tax levied under this

chapter shall become due and payable on (i) all untaxed alternative fuel held in storage or otherwise in the possession of the licensee and (ii) all alternative fuel sold, delivered, or used prior to the cancellation on which the tax has not been paid.

E. The Commissioner may cancel any license upon the written request of the licensee.

F. Upon cancellation of any license and payment by the licensee of all taxes due, including all penalties accruing due to any failure by the licensee to comply with the provisions of this article, the Commissioner shall cancel and surrender the bond, certificate of deposit, or irrevocable letter of credit filed by such licensee.

§ 58.1-2248. Notice of discontinuance, sale or transfer of business.

A. A licensee who discontinues in the Commonwealth the business for which the license was issued shall notify the Commissioner in writing of such discontinuance and shall surrender the license to the Commissioner. The notice shall state the effective date of the discontinuance and, if the license holder has transferred the business or otherwise relinquished control to another person by sale or otherwise, the date of the sale or transfer and the name and address of the person to whom the business is transferred or relinquished. The notice shall also include any other information required by the Commissioner.

B. All taxes for which the license holder is liable under this article but are not yet due shall be due on the date of the discontinuance. If the license holder has transferred the business to another person and does not give the notice required by this section, the person to whom the business was transferred shall be liable for the amount of any tax owed by the license holder to the Commonwealth on the date the business was transferred. The liability of the person to whom the business was transferred shall not exceed the value of the property acquired from the license holder.

§ 58.1-2249. Tax on alternative fuel.

A. There is hereby levied a tax at the rate of sixteen cents per gallon on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied a tax at a rate equivalent to sixteen cents per gallon on all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of fifty dollars per vehicle on each highway vehicle that is fueled from a private source if the alternative fuels tax levied under this article has not been paid on fuel used in the vehicle. If such a highway vehicle is not in operation by January 1 of any year, the license tax shall be reduced by one-twelfth for each complete month which shall have elapsed since the beginning of such year.

§ 58.1-2250. Exemptions from tax.

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

1. Alternative fuel sold and delivered to a governmental entity for the exclusive use by the governmental entity. This exemption shall not apply with respect to alternative fuel sold or delivered to any person operating under contract with the governmental entity; and

2. Alternative fuel sold and delivered to a nonprofit charitable organization which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and which is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air ambulance services for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft.

§ 58.1-2251. Liability for tax; filing returns; payment of tax.

A. A bulk end-user of alternative fuel or retailer of alternative fuel who stores highway and nonhighway alternative fuel in the same storage tank shall be liable for the tax imposed by this article, and shall file tax returns and remit taxes in accordance with subsection D. The tax payable by a bulk end-user of alternative fuel or retailer of alternative fuel is imposed at the point that alternative fuel is withdrawn from the storage tank.

B. A provider of alternative fuel who sells or delivers alternative fuel shall be liable for the tax imposed by this article (i) on sales to a bulk end-user of alternative fuel or retailer of alternative fuel who stores highway product in a separate storage tank or (ii) if the alternative fuel is sold or used by the provider of alternative fuel for highway use.

C. The owner of a highway vehicle subject to an annual license tax pursuant to subsection B of § 58.1-2249 shall be liable for such annual license tax. The annual license tax shall be due on or before the last day of December of each year.

D. 1. Each (i) bulk end-user of alternative fuel or retailer of alternative fuel liable for tax pursuant to subsection A and (ii) provider of alternative fuel liable for the tax pursuant to subsection B, shall file a monthly tax return with the Department. The tax on alternative fuel levied by this article, except for the annual license tax imposed under subsection B of § 58.1-2249, that is required to be remitted to the Commonwealth shall be payable to the Commonwealth not later than the date on which the return is

1290 due. A return shall be (i) postmarked by the last day of the month succeeding the month for which the  
1291 return is due or (ii) received by the Department by the fifth day of the second month succeeding the  
1292 month for which the return is due. However, a monthly return of the tax for the month of May shall be  
1293 (i) postmarked by June 25 or (ii) received by the Commissioner by the last business day the Department  
1294 is open for business in June.

1295 2. If a tax return due date falls on a Saturday, Sunday, or a state or banking holiday, the return  
1296 shall be postmarked or received by the Department by midnight of the next business day the Department  
1297 is open for business. This provision shall not apply to a return of the tax for the month of May.

1298 3. A return shall be deemed postmarked if it carries the official cancellation mark of the United  
1299 States Postal Service or other postal or delivery service.

1300 4. A return shall be filed with the Commissioner and shall be in the form and contain the  
1301 information required by the Commissioner.

1302 § 58.1-2252. Remittance of tax to provider of alternative fuel.

1303 A purchaser of alternative fuel, other than a bulk end-user of alternative fuel or a retailer of  
1304 alternative fuel who is liable for the tax pursuant to subsection A of § 58.1-2251, shall remit the tax due  
1305 on the fuel to the provider of the fuel. A bulk end-user of alternative fuel or retailer of alternative fuel  
1306 who has posted a bond in accordance with § 58.1-2246 shall not be required to remit the tax to the  
1307 provider until the date the provider is required to pay the tax to the Commonwealth. All tax payments  
1308 received by a provider of alternative fuel from a bulk end-user of alternative fuel or retailer of  
1309 alternative fuel shall be held in trust by the provider until the provider remits the tax payments to the  
1310 Commonwealth, and the provider shall constitute the trustee for such tax payments. The date by which  
1311 other purchasers of alternative fuel are required to remit tax to a provider shall be determined by  
1312 agreement between the provider and the purchaser.

1313 § 58.1-2253. Notice to providers of alternative fuel of cancellation or reissuance of certain licenses;  
1314 effect of notice.

1315 A. If the Commissioner cancels the license of a bulk end-user of alternative fuel or retailer of  
1316 alternative fuel who has posted a bond in accordance with § 58.1-2246, the Commissioner shall notify  
1317 all providers of alternative fuel of the cancellation. If the Commissioner issues a license to a bulk  
1318 end-user of alternative fuel or retailer of alternative fuel whose license was previously canceled, the  
1319 Commissioner shall notify all providers of alternative fuel of the issuance.

1320 B. A provider of alternative fuel who sells alternative fuel to a bulk end-user of alternative fuel or  
1321 retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246, after receiving notice  
1322 from the Commissioner that the Commissioner has canceled the license of a bulk end-user of alternative  
1323 fuel or of a retailer of alternative fuel, is jointly and severally liable with the bulk end-user of  
1324 alternative fuel or retailer of alternative fuel for any tax due on the alternative fuel that the provider of  
1325 alternative fuel sells to the bulk end-user of alternative fuel or retailer of alternative fuel after receiving  
1326 the notice; however, the provider of alternative fuel shall not be liable for tax due on alternative fuel  
1327 sold to a previously unlicensed bulk end-user of alternative fuel or retailer of alternative fuel after the  
1328 provider of alternative fuel receives notice from the Commissioner that the Commissioner has issued  
1329 another license to the bulk end-user of alternative fuel or retailer of alternative fuel.

1330 § 58.1-2254. Exempt sale deduction.

1331 A licensed retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246 may  
1332 deduct from the amount of tax otherwise payable to a provider of alternative fuel the amount calculated  
1333 on alternative fuel that the licensee received from the provider and resold to a governmental entity, or  
1334 resold to an organization described in subdivision 2 of § 58.1-2250 for use in the operation of an  
1335 aircraft, whose purchases of alternative fuel are exempt from the tax under such section if, when  
1336 purchasing the fuel, the retailer notified the provider of the retailer's intent to resell the fuel in an  
1337 exempt sale.

1338 § 58.1-2255. Returns and payments by bulk end-users and retailers of alternative fuel; storage.

1339 A. Each bulk end-user of alternative fuel and retailer of alternative fuel shall file a quarterly  
1340 informational return with the Commissioner. A quarterly return covers a calendar quarter and is due by  
1341 the last day of the month that follows such quarter.

1342 The return shall include the following information and any other information required by the  
1343 Commissioner:

1344 1. The amount of alternative fuel received during the quarter;

1345 2. The amount of alternative fuel sold or used during the quarter;

1346 3. The number of gallons for which a deduction was taken during the quarter pursuant to  
1347 § 58.1-2254, by provider, if applicable; and

1348 4. The number of gallons sold in exempt sales during the quarter, by type of sale, and the purchaser  
1349 of the fuel in the exempt sales, if applicable.

1350 B. If the number of gallons for which an eligible retailer of alternative fuel takes a deduction during  
1351 a quarter exceeds the number of exempt gallons or gallon equivalent sold, the retailer of alternative fuel

shall pay tax on the difference at the rate imposed by subsection A of § 58.1-2249. The tax shall be payable when the informational return is due.

C. A bulk end-user of alternative fuel or a retailer of alternative fuel may store highway and nonhighway alternative fuel in separate storage tanks or in the same storage tank. If highway and nonhighway alternative fuel are stored in separate storage tanks, the tank for the nonhighway fuel shall be marked in accordance with the requirements set by § 58.1-2279 for dyed diesel storage facilities. If highway and nonhighway alternative fuel are stored in the same storage tank, the storage tank shall be equipped with separate metering devices for the highway fuel and the nonhighway fuel. If the Commissioner determines that a bulk end-user of alternative fuel or retailer of alternative fuel used or sold alternative fuel to operate a highway vehicle when the fuel was dispensed from a storage tank or through a meter marked for nonhighway use, all fuel delivered into that storage tank shall be presumed to have been used to operate a highway vehicle.

§ 58.1-2256. Deductions and discounts for providers of alternative fuel filing returns.

A. When a provider of alternative fuel files a return, the provider of alternative fuel may deduct from the amount of tax payable with the return the amount of tax any of the following licensees owes the provider of alternative fuel but failed to remit to the provider of alternative fuel:

1. A licensed bulk end-user of alternative fuel who has posted a bond in accordance with § 58.1-2246; and

2. A licensed retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246.

A provider of alternative fuel shall not be liable for tax that such a licensee owes the provider of alternative fuel but fails to pay. If such licensee pays the tax owed to a provider of alternative fuel after the provider of alternative fuel deducts the amount of such tax on a return, the provider of alternative fuel shall remit the payment to the Commissioner with the next monthly return filed subsequent to receipt of the tax.

B. A provider of alternative fuel who timely files a return with the payment due may deduct, from the amount of tax payable with the return, an administrative discount of one-tenth of one percent of the amount of tax payable to this Commonwealth, not to exceed a total of \$5,000 per month. The administrative discount allowed a provider of alternative fuel who is also licensed as a supplier under Article 2 (§ 58.1-2204 et seq.) of this chapter shall not exceed \$5,000 per month for both licenses.

§ 58.1-2257. Duties of provider of alternative fuel as trustee.

A. All tax payments due to the Commonwealth received by a provider of alternative fuel pursuant to § 58.1-2252 shall be held by the provider of alternative fuel as trustee in trust for the Commonwealth, and a provider of alternative fuel has a fiduciary duty to remit to the Commissioner the amount of tax received by the provider of alternative fuel. A provider of alternative fuel shall be liable for the taxes paid to him.

B. A provider of alternative fuel shall notify a bulk end-user of alternative fuel or retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246 and who received alternative fuel from the provider of alternative fuel during a reporting period of the number of taxable gallons or equivalent taxable gallons received. The provider of alternative fuel shall give this notice after the end of each reporting period and before the licensee is required to remit to the provider of alternative fuel the amount of tax due on the fuel.

C. A provider of alternative fuel shall notify the Commissioner within ten business days after a return is due of any licensed bulk end-user of alternative fuel or retailer of alternative fuel who (i) has posted a bond in accordance with § 58.1-2246 and (ii) did not pay the tax due the provider of alternative fuel when the provider filed his return. The notice shall be transmitted to the Commissioner in the form required by the Commissioner.

D. A provider of alternative fuel who receives a payment of tax shall not apply the payment to a debt that the person making the tax payment owes to the provider of alternative fuel for alternative fuel purchased from the provider of alternative fuel.

§ 58.1-2258. Use of name and account number on return.

When a transaction with a person licensed under this article is required to be reported on a return, the return shall state the licensee's name and account number as stated on the lists compiled by the Commissioner under § 58.1-2216.

#### Article 6.

#### Refunds.

§ 58.1-2259. Fuel uses eligible for refund.

A. A refund shall be granted in accordance with the provisions of § 58.1-2261 to any person who establishes to the satisfaction of the Commissioner that such person has paid the tax levied pursuant to this chapter upon any fuel:

1. Sold and delivered to a governmental entity for its exclusive use;

2. Used by a governmental entity. Persons operating under contract with a governmental entity shall



1413 *not be eligible for such refund;*

1414 *3. Sold and delivered to an organization described in subdivision 2 of § 58.1-2226 or subdivision 2*  
1415 *of § 58.1-2250 for its exclusive use in the operation of an aircraft;*

1416 *4. Used by an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250*  
1417 *for its exclusive use in the operation of an aircraft. Persons operating under contract with such an*  
1418 *organization shall not be eligible for such refund;*

1419 *5. Purchased by a person and subsequently transported and delivered by such person to another*  
1420 *state for sales or use outside the boundaries of the Commonwealth if the tax applicable in the*  
1421 *destination state has been paid. A refund shall not be granted pursuant to this section on any fuel which*  
1422 *is transported and delivered outside of the Commonwealth in the fuel supply tank of a highway vehicle*  
1423 *or an aircraft;*

1424 *6. Used by any person performing transportation under contract or lease with any transportation*  
1425 *district for use in a highway vehicle controlled by a transportation district created under the*  
1426 *Transportation District Act of 1964 (§ 15.2-4500 et seq.) and used in providing transit service by the*  
1427 *transportation district by contract or lease. The refund shall be paid to the person performing such*  
1428 *transportation;*

1429 *7. Used by any private, nonprofit agency on aging, designated by the Department for the Aging,*  
1430 *providing transportation services to citizens in highway vehicles owned, operated or under contract with*  
1431 *such agency;*

1432 *8. Used in operating or propelling highway vehicles owned by a nonprofit organization that provides*  
1433 *specialized transportation to various locations for elderly or disabled individuals to secure essential*  
1434 *services and to participate in community life according to the individual's interest and abilities;*

1435 *9. Used in operating or propelling buses owned and operated by a county or the school board*  
1436 *thereof while being used to transport children to and from public school or from school to and from*  
1437 *educational or athletic activities;*

1438 *10. Used by buses owned or solely used by a private, nonprofit, nonsectarian school while being*  
1439 *used to transport children to and from such school or from such school to and from educational or*  
1440 *athletic activities;*

1441 *11. Used by any county or city school board or any private, nonprofit, nonsectarian school*  
1442 *contracting with a private carrier to transport children to and from public schools or any private,*  
1443 *nonprofit, nonsectarian school. The tax shall be refunded to the private carrier performing such*  
1444 *transportation;*

1445 *12. Used in operating or propelling the equipment of volunteer firefighting companies and of*  
1446 *volunteer rescue squads within this Commonwealth used actually and necessarily for firefighting and*  
1447 *rescue purposes;*

1448 *13. Used in operating or propelling motor equipment belonging to counties, cities and towns if*  
1449 *actually used in public activities;*

1450 *14. Used for a purpose other than in operating or propelling highway vehicles, watercraft or*  
1451 *aircraft;*

1452 *15. Used off-highway in self-propelled equipment manufactured for a specific off-road purpose,*  
1453 *which is used on a job site and the movement of which on any highway is incidental to the purpose for*  
1454 *which it was designed and manufactured;*

1455 *16. Proven to be lost by accident, including the accidental mixing of (i) dyed diesel fuel with*  
1456 *tax-paid motor fuel, (ii) gasoline with diesel fuel, or (iii) undyed diesel fuel with dyed kerosene, but*  
1457 *excluding fuel lost through personal negligence or theft;*

1458 *17. Used in operating or propelling vehicles used solely for racing other vehicles on a race track;*

1459 *18. Used in operating or propelling unlicensed highway vehicles and other unlicensed equipment*  
1460 *used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or*  
1461 *lessee of such vehicles and not operated on or over any highway for any purpose other than to move it*  
1462 *in the manner and for the purpose mentioned. The amount of refund shall be equal to the amount of the*  
1463 *taxes paid less one-half cent per gallon on such fuel so used which shall be paid by the Commissioner*  
1464 *into the state treasury to the credit of the Virginia Agricultural Foundation Fund;*

1465 *19. Used in operating or propelling commercial watercraft. The amount of refund shall be equal to*  
1466 *the amount of the taxes paid less one and one-half cents per gallon on such fuel so used which shall be*  
1467 *paid by the Commissioner into the state treasury to be credited as provided in subsection D of*  
1468 *§ 58.1-2289. If any applicant so requests, the Commissioner shall pay into the state treasury, to the*  
1469 *credit of the Game Protection Fund, the entire seventeen and one-half cents per gallon tax paid by such*  
1470 *applicant for the purposes specified in subsection D of § 58.1-2289. If any applicant who is an operator*  
1471 *of commercial watercraft so requests, the Commissioner shall pay into the state treasury, to the credit of*  
1472 *the Marine Fishing Improvement Fund, the entire seventeen and one-half cents per gallon tax paid by*  
1473 *such applicant for the purposes specified in § 28.2-208; or*

1474 *20. Used in operating stationary gas engines, or pumping or mixing equipment on a highway vehicle*



if the fuel used to operate such equipment is stored in an auxiliary tank separate from the fuel tank used to propel the highway vehicle, and the highway vehicle is mechanically incapable of self-propulsion while fuel is being used from the auxiliary tank.

B. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete highway vehicle, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to thirty-five percent of the tax paid on such fuel.

C. Any person purchasing any fuel on which tax imposed pursuant to this chapter has been paid may apply for a refund of the tax if such fuel was consumed by a highway vehicle used in operating an urban or suburban bus line or a taxicab service. This refund also applies to a common carrier of passengers which has been issued a certificate of public convenience and necessity pursuant to §§ 46.2-2004 and 46.2-2007 providing regular route service over the highways of the Commonwealth. No refund shall be granted unless the majority of the passengers using such bus line, taxicab service or common carrier of passengers do so for travel of a distance of not more than forty miles, one way, in a single day between their place of abode and their place of employment, shopping areas or schools.

If the applicant for a refund is a taxicab service, he shall hold a valid permit from the Department to engage in the business of a taxicab service. No applicant shall be denied a refund by reason of the fee arrangement between the holder of the permit and the driver or drivers, if all other conditions of this section have been met.

Under no circumstances shall a refund be granted more than once for the same fuel. The amount of refund under this subsection shall be equal to the amount of the taxes paid, except refunds granted on the tax paid on fuel used by a taxicab service shall be in an amount equal to the tax paid less one cent per gallon on the fuel used.

Any refunds made under this subsection shall be deducted from the urban highway funds allocated to the highway construction district, pursuant to Article 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title 33.1, in which the recipient has its principal place of business.

Except as otherwise provided in this chapter, all provisions of law applicable to the refund of fuel taxes by the Commissioner generally shall apply to the refunds authorized by this subsection. Any county having withdrawn its roads from the secondary system of state highways under provisions of § 11 Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is now provided by law with respect to other fuel tax receipts.

§ 58.1-2260. Refund of taxes erroneously or illegally collected.

If it appears to the satisfaction of the Commissioner that any taxes or penalties imposed by this chapter have been erroneously or illegally collected from any person, such person shall be entitled to a refund upon proper application to the Commissioner. No refund shall be made under the provisions of this section unless a written statement, setting forth the circumstances and reasons why such refund is claimed, is filed with the Commissioner within one year of the date of payment of the tax for which the refund is claimed. The claim shall be in such form as the Commissioner shall prescribe and shall be sworn to by the claimant.

§ 58.1-2261. Refund procedure; investigations; retail sales and use tax.

A. Any person entitled to a refund pursuant to § 58.1-2259 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 seller showing such purchase. The applicant shall set forth the basis for the claimed refund, the total amount of such fuel purchased and used by such applicant, and how such fuel was used. The Commissioner, upon the presentation of such application and paid ticket, invoice or other document, shall refund to the claimant the proper amount of the tax paid as provided in this chapter, subject to the provisions of subsection D. A ticket issued to the holder of a credit card as evidence of the delivery to such holder of tax-paid fuel shall, for the purpose of this section, be a paid ticket or invoice. Tickets or invoices marked "duplicate" shall not be acceptable.

B. The application for a refund shall be filed within one year from the date of the sale as shown on the paid ticket or invoice. However, an application for a refund pursuant to subdivision A 5 of § 58.1-2259 shall be filed within three years of the date such fuel is transported outside the Commonwealth.

C. In the event an assessment is rendered for failure to report and pay the tax imposed as provided in § 58.1-2217 or § 58.1-2249 and such fuel is subject to refund under the provisions of § 58.1-2259, the application for a refund shall be filed with the Commissioner by the person entitled to such refund within one year 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.

D. The Department may make any investigation it considers necessary before refunding the fuels tax to a person, and may investigate a refund after the refund has been issued and within the time frame for

1536 *adjusting tax under this chapter.*

1537 *E. In accordance with § 58.1-609.1, any person who is refunded tax pursuant to § 58.1-2259 shall be*  
1538 *subject to the taxes imposed by Chapter 6 (§ 58.1-600 et seq.) of this title, unless such transaction is*  
1539 *specifically exempted pursuant to § 58.1-609.1.*

1540 *§ 58.1-2262. Payment of refund.*

1541 *Whenever it appears to the satisfaction of the Commissioner that any person is entitled to a refund*  
1542 *for taxes paid pursuant to this chapter, the Commissioner shall forthwith certify the amount of the*  
1543 *refund to the Comptroller. The amount of the refund shall be paid by check issued by the State*  
1544 *Treasurer on warrant of the Comptroller.*

1545 *Article 7.*

1546 *Enforcement and Administration.*

1547 *§ 58.1-2263. Shipping documents; transportation of motor fuel by railroad tank car or transport*  
1548 *truck; civil penalty.*

1549 *A. A person shall not transport motor fuel by railroad tank car or transport truck unless the person*  
1550 *has a shipping document for its transportation that complies with this section. A terminal operator or*  
1551 *operator of a bulk plant shall give a shipping document to the person who operates the railroad tank*  
1552 *car or transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.*

1553 *B. The shipping document issued by the terminal operator or operator of a bulk plant shall be*  
1554 *machine-printed and shall contain the following information and any other information required by the*  
1555 *Commissioner:*

1556 *1. Identification, including address, of the terminal or bulk plant from which the motor fuel was*  
1557 *received;*

1558 *2. Date the motor fuel was loaded;*

1559 *3. Gross gallons loaded;*

1560 *4. Destination state of the motor fuel, as represented by the purchaser of the motor fuel or the*  
1561 *purchaser's agent;*

1562 *5. In the case of aviation jet fuel sold to an aviation consumer, the shipping document shall be*  
1563 *marked with the phrase "Aviation Jet Fuel, Not for On-road Use" or a similar phrase; and*

1564 *6. If the document is issued by a terminal operator, (i) net gallons loaded and (ii) tax responsibility*  
1565 *statement indicating the name of the supplier who is responsible for the tax due on the motor fuel.*

1566 *C. A terminal operator or bulk plant operator may rely on the representation made by the purchaser*  
1567 *of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser*  
1568 *shall be liable for any tax due as a result of the purchaser's diversion of fuel from the represented*  
1569 *destination state.*

1570 *D. A person to whom a shipping document was issued shall:*

1571 *1. Carry the shipping document in the means of conveyance for which it was issued when*  
1572 *transporting the motor fuel described;*

1573 *2. Show the shipping document to a law enforcement officer upon request when transporting the*  
1574 *motor fuel described;*

1575 *3. Deliver motor fuel described in the shipping document to the destination state printed on it unless*  
1576 *the person:*

1577 *a. Notifies the Commissioner before transporting the motor fuel into a state other than the printed*  
1578 *destination state that the person has received instructions after the shipping document was issued to*  
1579 *deliver the motor fuel to a different destination state;*

1580 *b. Receives from the Commissioner a confirmation number authorizing the diversion; and*

1581 *c. Writes on the shipping document the change in destination state and the confirmation number for*  
1582 *the diversion; and*

1583 *4. Give a copy of the shipping document to the distributor or other person to whom the motor fuel is*  
1584 *delivered.*

1585 *E. The person to whom motor fuel is delivered by railroad tank car or transport truck shall not*  
1586 *accept delivery of the motor fuel if the destination state shown on the shipping document for the motor*  
1587 *fuel is a state other than Virginia. To determine if the shipping document shows Virginia as the*  
1588 *destination state, the person to whom the fuel is delivered shall examine the shipping document and*  
1589 *keep a copy of the shipping document (i) at the place of business where the motor fuel was delivered for*  
1590 *ninety days following the date of delivery and (ii) at such place or another place for at least three years*  
1591 *following the date of delivery. The person who accepts delivery of motor fuel in violation of this*  
1592 *subsection and any person liable for the tax on the motor fuel pursuant to Article 3 (§ 58.1-2217 et*  
1593 *seq.) of this chapter shall be jointly and severally liable for any tax due on the fuel.*

1594 *F. Any person who (i) transports motor fuel in a railroad tank car or transport truck without a*  
1595 *shipping document or with a false or an incomplete shipping document or (ii) delivers motor fuel to a*  
1596 *destination state other than that shown on the shipping document, shall be subject to a civil penalty. If*  
1597 *the fuel is transported in a transport truck, the civil penalty imposed under this subsection shall be*

payable by the person in whose name the means of conveyance is registered. If the fuel is transported in a railroad tank car, the civil penalty imposed under this subsection shall be payable by the person responsible for the movement of the motor fuel in the railroad tank car. The amount of the civil penalty assessed against a person for his first violation shall be \$5,000. The amount of the civil penalty assessed against a person for his second or subsequent violation shall be \$10,000.

§ 58.1-2264. Import confirmation number required; civil penalty.

A. An importer who acquires motor fuel for import from a supplier who is not an elective supplier or a permissive supplier, and who therefore is not acting as trustee for the remittance of tax to the Commonwealth on behalf of the importer, shall obtain an import confirmation number from the Commissioner before importing the motor fuel. The importer shall write the import confirmation number on the shipping document issued for the fuel. The importer shall obtain a separate import confirmation number for each such delivery of motor fuel into Virginia.

B. An importer who does not obtain an import confirmation number when required by this section shall be subject to a civil penalty. The civil penalty shall be payable by the person in whose name the transport truck is registered. The amount of the civil penalty assessed against a person for his first violation shall be \$5,000. The amount of the civil penalty assessed against a person for his second or subsequent violation shall be \$10,000.

§ 58.1-2265. Improper sale or use of untaxed fuel; civil penalty.

A. Any person committing any of the following acts shall be subject to the civil penalty specified in subsection B:

1. Selling or storing any dyed diesel fuel for use in a highway vehicle that is licensed or required to be licensed, unless that use is allowed under 26 U.S.C. § 4082;

2. Willfully altering or attempting to alter the strength or composition of any dye or marker in any dyed diesel fuel intended to be used in a highway vehicle;

3. Using dyed diesel fuel in a highway vehicle unless that use is allowed under 26 U.S.C. § 4082;

4. Acquiring, selling or storing any fuel for use in a watercraft, aircraft, or highway vehicle that is licensed or required to be licensed unless the tax levied by this chapter has been paid; or

5. Using any fuel in a watercraft, aircraft, or highway vehicle that is licensed or required to be licensed unless the tax levied by this chapter has been paid.

B. The amount of the civil penalty for any act described in subsection A shall be the greater of \$1,000 or ten dollars per gallon of fuel, based on the maximum storage capacity of the storage tank, container or storage tank of the highway vehicle, watercraft or aircraft.

C. The Commissioner is authorized to reduce or waive any civil penalties under this section if the violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner.

§ 58.1-2266. Late filing or payment; civil penalty.

A. Any licensee committing any of the following acts shall be subject to the civil penalty specified in subsection B:

1. Failure to submit a report required by this chapter on a timely basis;

2. Failure to submit the data required by this chapter; or

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

B. The amount of the civil penalty for any act described in subsection A shall be equal to ten percent of the tax due or fifty dollars, whichever is greater; however, penalties resulting from an audit shall be equal to ten percent of the tax due. After imposition of the penalty, the amount of the tax and the penalty shall bear interest at the rate of one percent per month until the tax and penalty are paid.

C. The Commissioner is authorized to reduce or waive any penalties under this section if the violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner.

§ 58.1-2267. Refusal to allow inspection or taking of sample; civil penalty.

Any person who refuses to allow an inspection or allow the taking of a fuel sample authorized by § 58.1-2276 or § 58.1-2277 shall be subject to a civil penalty of \$5,000 for each refusal. If the refusal is for a sample to be taken from a vehicle, the penalty shall be payable by the person in whose name the vehicle is registered. If the refusal is for a sample to be taken from any other storage tank or container, the penalty shall be payable by the owner of such storage tank or container.

§ 58.1-2268. Engaging in business without a license; civil penalty.

Any person who engages in any business activity within the Commonwealth for which a license is required by this chapter without a valid license shall be subject to a civil penalty. The amount of the civil penalty assessed against a person for his first violation shall be \$5,000. The amount of the civil penalty assessed against a person for his second or subsequent violation shall be \$10,000.

§ 58.1-2269. False or fraudulent return; civil penalty.

Any person liable for a tax levied under this chapter who files a false or fraudulent return with the intent to evade the tax shall be subject to a civil penalty. The amount of the civil penalty shall be equal

1659 to fifty percent of the amount of the tax intended to be evaded by the filing of such return. The civil  
1660 penalty shall be in addition to the amount of the tax intended to be evaded.

1661 § 58.1-2270. Failure to keep or retain records; civil penalty.

1662 Any person who fails to keep or retain records as required by this chapter shall be subject to a civil  
1663 penalty. The amount of the civil penalty assessed against a person for his first violation shall be \$1,000.  
1664 The amount of the civil penalty assessed against a person for each subsequent violation shall be \$1,000  
1665 more than the amount of the civil penalty for the preceding violation.

1666 § 58.1-2271. Payment of civil penalties; disposition.

1667 Any civil penalty assessed pursuant to this chapter shall be payable to the Department, shall be in  
1668 addition to any other penalty or tax that may be imposed as provided in this chapter, and shall be  
1669 collectible by the Commissioner in the same manner as if it were part of the tax levied. The amount of  
1670 any civil penalty imposed under this chapter shall bear interest at the rate of one percent per month  
1671 until paid. All civil penalties imposed under this chapter shall be deposited as provided in § 58.1-2289.

1672 § 58.1-2272. Prohibited acts; criminal penalties.

1673 A. Any person who commits any of the following acts shall be guilty of a Class 1 misdemeanor:

1674 1. Failing to obtain a license required by this chapter;

1675 2. Failing to file a return required by this chapter;

1676 3. Failing to pay a tax when due under this chapter;

1677 4. Failing to pay a tax collected on behalf of a destination state to that state when it is due;

1678 5. Making a false statement in an application, return, ticket, invoice, statement, or any other  
1679 document required under this chapter;

1680 6. Making a false statement in an application for a refund;

1681 7. Failing to keep records as required under this chapter;

1682 8. Refusing to allow the Commissioner or a representative of the Commissioner to examine the  
1683 person's books and records concerning fuel;

1684 9. Failing to make a required disclosure of the correct amount of fuel sold or used in the  
1685 Commonwealth;

1686 10. Failing to file a replacement or additional bond, certificate of deposit, or irrevocable letter of  
1687 credit as required under this chapter;

1688 11. Failing to show or give a shipping document as required under this chapter;

1689 12. Refusing to allow a licensed distributor, licensed exporter, or licensed importer to defer payment  
1690 of tax to the supplier, as required by § 58.1-2231;

1691 13. Refusing to allow a bulk end-user of alternative fuel or a retailer of alternative fuel who has  
1692 posted a bond in accordance with § 58.1-2246 to defer payment of tax to the provider of alternative  
1693 fuel, as required by § 58.1-2252;

1694 14. Refusing to allow a licensed distributor or a licensed importer to take a deduction or discount  
1695 allowed by § 58.1-2233 when remitting the tax to the supplier, or to allow a licensed retailer of  
1696 alternative fuel to take a deduction or discount allowed by § 58.1-2254 when remitting the tax to the  
1697 provider of alternative fuel;

1698 15. Using, delivering, or selling any aviation fuel for use or intended for use in highway vehicles or  
1699 watercraft;

1700 16. Violating the provisions of § 58.1-2278;

1701 17. Interfering with or refusing to permit seizures authorized under § 58.1-2274;

1702 18. Delivering fuel from a transport truck or tank wagon to the fuel tank of a highway vehicle,  
1703 except in an emergency; however, it shall not be unlawful to fuel vehicles from a transport truck or tank  
1704 wagon if (i) such fueling takes place off-highway and (ii) any fuel for highway use is fuel upon which  
1705 the motor fuel tax has been paid; or

1706 19. Failing to comply with a requirement of a supplier to remit by electronic funds transfer the tax  
1707 payable to the supplier;

1708 B. A person who knowingly commits any of the following acts shall be guilty of a Class 1  
1709 misdemeanor:

1710 1. Dispenses any fuel on which tax levied pursuant to this chapter has not been paid into the supply  
1711 tank of a highway vehicle, watercraft, or aircraft; or

1712 2. Allows any fuel on which tax levied pursuant to this chapter has not been paid to be dispensed  
1713 into the supply tank of a highway vehicle, watercraft, or aircraft.

1714 § 58.1-2273. Willful commission of prohibited acts; criminal penalties.

1715 Any person who willfully commits any of the following acts with the intent to (i) evade or circumvent  
1716 the Commonwealth's fuels tax laws or (ii) assist any other person in efforts to evade or circumvent such  
1717 laws, shall be guilty of a Class 6 felony:

1718 1. Alters, manipulates, replaces, or in any other manner tampers or interferes with, or causes to be  
1719 altered, manipulated, replaced, tampered or interfered with, a totalizer attached to fuel pumps to  
1720 measure the dispensing of fuel;

- 1721 2. Does not pay fuels taxes and diverts such tax proceeds for other purposes;  
 1722 3. If the person is a licensee or the agent or representative of a licensee, he converts or attempts to  
 1723 convert fuel tax proceeds for the use of the licensee or the licensee's agent or representative, with the  
 1724 intent to defraud the Commonwealth;  
 1725 4. Illegally collects fuel taxes when not authorized or licensed by the Commissioner to do so;  
 1726 5. Illegally imports fuel into the Commonwealth;  
 1727 6. Conspires with any other person or persons to engage in an act, plan, or scheme to defraud the  
 1728 Commonwealth of fuels tax proceeds;  
 1729 7. Uses any dyed diesel fuel for a use that the user knows or has reason to know is a taxable use of  
 1730 the fuel, or sells any dyed diesel fuel to a person who the seller knows or has reason to know will use  
 1731 the fuel for a taxable purpose; however, if the amount of fuel involved is not more than twenty gallons,  
 1732 such person shall be guilty of a Class 1 misdemeanor;  
 1733 8. Alters or attempts to alter the strength or composition of any dye or marker in any dyed diesel  
 1734 fuel intended to be used for a taxable purpose; or  
 1735 9. Fails to remit to the Commissioner any tax levied pursuant to this chapter, if the person (i) has  
 1736 added, or represented that he has added, the tax to the sales price for the fuel and (ii) has collected the  
 1737 amount of the tax.
- 1738 § 58.1-2274. Unlawful importing, transportation, delivery, storage or sale of fuel; sale to enforce  
 1739 assessment.
- 1740 A. Upon the discovery of any fuel illegally imported into, or illegally transported, delivered, stored  
 1741 or sold in, the Commonwealth, the Commissioner shall order the tank or other storage receptacle in  
 1742 which the fuel is located to be seized and locked or sealed until the tax, penalties and interest levied  
 1743 under this chapter are assessed and paid.
- 1744 B. If the assessment for such tax is not paid within thirty days, the Commissioner is hereby  
 1745 authorized, in addition to the other remedies authorized in this chapter, to sell such fuel and use the  
 1746 proceeds of such sale to satisfy the assessment due, with any funds which exceed the assessment and  
 1747 costs of the sale being returned to the owner of the fuel.
- 1748 C. All fuel and any property, tangible or intangible, which may be found upon the person or in any  
 1749 vehicle which such person is using, including the vehicle itself, to aid the person in the transportation  
 1750 or sale of illegally transported, delivered, stored, sold, imported or acquired fuel, and any property  
 1751 found in the immediate vicinity of any place where such illegally transported, delivered, stored, sold,  
 1752 imported or acquired fuel may be located, including motor vehicles, tanks, and other storage devices,  
 1753 used to aid in the illegal transportation or sale of such fuel, shall be deemed contraband and shall be  
 1754 forfeited to the Commonwealth.
- 1755 D. Any efforts by the Department to effect the forfeiture allowed under the authority of this section  
 1756 shall be governed by Chapter 22 (§ 19.2-369 et seq.) of Title 19.2, *mutatis mutandis*. However, such  
 1757 procedures shall not be applicable to the Department's tax collection powers and the use of such powers  
 1758 to enforce a tax liability against the illegally transported, delivered, stored, sold, imported or acquired  
 1759 fuel.
- 1760 § 58.1-2275. Record-keeping requirements.
- 1761 Each (i) person required or electing to be licensed under Article 2 (§ 58.1-2204 et seq.) of this  
 1762 chapter, (ii) distributor and bulk end-user not licensed under this chapter, and (iii) person required to  
 1763 be licensed under § 58.1-2244, shall keep and maintain, for a period of three years, all records  
 1764 pertaining to fuel received, produced, manufactured, refined, compounded, used, sold or delivered,  
 1765 together with delivery tickets, invoices, bills of lading, and such other pertinent records and papers as  
 1766 may be required by the Commissioner for the reasonable administration of this chapter.
- 1767 § 58.1-2276. Inspection of records.
- 1768 A. The Commissioner or any deputy, employee or agent authorized by the Commissioner may  
 1769 examine, during the usual business hours of the day, records, books, papers, storage tanks and any  
 1770 other equipment of any person required to maintain records as provided in § 58.1-2275 for the purpose  
 1771 of ascertaining the quantity of fuel received, produced, manufactured, refined, compounded, used, sold,  
 1772 shipped, or delivered, to verify the truth and accuracy of any statement, report or return or to ascertain  
 1773 whether or not the tax levied by this chapter has been paid.
- 1774 B. If a person required to maintain records as provided in § 58.1-2275 is open for business during  
 1775 hours of the day which might not be considered usual business hours for the Department, the  
 1776 Commissioner may examine the person's books and records during the person's normal business hours,  
 1777 which shall be those hours when the person is open for business at any of the person's places of  
 1778 business. If the person does not maintain such books and records on the premises, the Commissioner or  
 1779 any deputy, employee or agent authorized by the Commissioner may inspect such books and records  
 1780 where they are maintained, irrespective of the working hours at such location, as long as one of the  
 1781 person's places of business maintains hours at the time of day during which the Commissioner asserts

1782 *such inspection powers.*

1783 *§ 58.1-2277. Administrative authority.*

1784 *A. Employees of the Department designated by the Commissioner, upon presenting appropriate*  
1785 *credentials and a written notice to the owner, operator, or agent in charge, are authorized to enter any*  
1786 *place and to conduct inspections in accordance with this section. Inspections shall be performed in a*  
1787 *reasonable manner and at times that are reasonable under the circumstances, taking into consideration*  
1788 *the normal business hours of the place to be inspected.*

1789 *B. Inspections may be conducted at any place where taxable fuel or fuel dyes or markers are, or*  
1790 *may be, produced, altered, or stored, or at any inspection site where evidence of production, alteration,*  
1791 *or storage may be discovered. These places may include, but shall not be limited to any: (i) terminal,*  
1792 *(ii) fuel storage facility that is not a terminal, (iii) retail fuel facility, and (iv) designated inspection site.*

1793 *C. Employees of the Department designated by the Commissioner may physically inspect, examine,*  
1794 *and otherwise search any tank, reservoir, or other container that can or may be used for the*  
1795 *production, storage, or transportation of fuel, fuel dyes or markers. Inspection may also be made of any*  
1796 *equipment used for, or in connection with, the production, storage, or transportation of fuel, fuel dyes*  
1797 *or markers, including equipment used for the dyeing or marking of fuel. Such employees may also*  
1798 *inspect the books and records kept to determine fuel tax liability under this chapter.*

1799 *D. Employees of the Department designated by the Commissioner may, on the premises or at a*  
1800 *designated inspection site, take and remove samples of fuel in such reasonable quantities as are*  
1801 *necessary to determine its composition.*

1802 *§ 58.1-2278. Equipment requirements.*

1803 *A. All fuel dispensed at retail shall be dispensed from metered pumps that indicate the total amount*  
1804 *of fuel measured through the pumps. Each pump shall be marked to indicate the type of fuel dispensed.*

1805 *B. A highway vehicle that transports fuel in a tank that is separate from the fuel supply tank of the*  
1806 *vehicle shall not have a connection from the transporting tank to the motor or to the supply tank of the*  
1807 *vehicle.*

1808 *§ 58.1-2279. Marking requirements for dyed diesel fuel storage facilities.*

1809 *A. A person who is a retailer of dyed diesel fuel or who stores dyed diesel fuel for use by that*  
1810 *person or another person shall mark, with the phrase "Dyed Diesel Fuel, Non-taxable Use Only, Penalty*  
1811 *for Taxable Use," or a similar phrase that clearly indicates that the diesel fuel is not to be used to*  
1812 *operate a highway vehicle, each storage facility or pump from which dyed diesel fuel is dispensed, as*  
1813 *follows:*

1814 *1. The storage tank of the storage facility, if the storage tank is visible;*

1815 *2. The fillcap or spill containment box of the storage facility; and*

1816 *3. The dispensing device that serves the storage facility.*

1817 *B. The marking requirements of this section shall not apply to a storage facility that contains fuel*  
1818 *used only in a heating, crop-drying, or manufacturing process, and is installed in a manner that makes*  
1819 *use of the fuel for any other purpose improbable.*

1820 *Article 8.*

1821 *Assessments and Collections.*

1822 *§ 58.1-2280. Estimates of fuel subject to tax; assessments; notice of assessment.*

1823 *When any licensee neglects, fails or refuses to make and file any report as required by this chapter*  
1824 *or files an incorrect or fraudulent report, the Commissioner shall determine, from any information*  
1825 *obtainable, the number of gallons of fuel with respect to which the licensee has incurred liability under*  
1826 *this chapter. The Commissioner is authorized to make an assessment for the tax and any penalty and*  
1827 *interest properly due against such licensee. The notice of assessment shall be sent to the licensee by*  
1828 *registered or certified mail or delivered by the Department to the last known address appearing in the*  
1829 *Commissioner's files. Such notice, when sent or delivered in accordance with these requirements, shall*  
1830 *be sufficient regardless of whether or not it was ever received.*

1831 *§ 58.1-2281. Application to Commissioner for correction.*

1832 *A. Any person assessed with any tax administered by the Department may, within thirty days from*  
1833 *the date of such assessment, apply for relief to the Commissioner. Such application shall be in the form*  
1834 *prescribed by the Department, and shall fully set forth the grounds upon which the taxpayer relies and*  
1835 *all facts relevant to the taxpayer's contention. The Commissioner may also require such additional*  
1836 *information, testimony or documentary evidence as he deems necessary to a fair determination of the*  
1837 *application.*

1838 *B. On receipt of a written notice of intent to file under this section, the Commissioner shall refrain*  
1839 *from collecting the tax until the time for filing hereunder has expired, unless he determines that*  
1840 *collection is in jeopardy.*

1841 *§ 58.1-2282. Appeal of Commissioner's decisions.*

1842 *A. Any person against whom an assessment, order or decision of the Commissioner has been*  
1843 *adversely rendered, which assessment, order, or decision relates to the collection of unreported,*

incorrectly or fraudulently reported taxes, the granting or canceling of a license, the filing of a bond, an increase in the amount of a bond, a change of surety on a bond, the filing of reports, the examination of records, or any other matter wherein the findings are in the discretion of the Commissioner, may, within thirty days from the date thereof, file a petition of appeal from such assessment, order, or decision, in the circuit court in the city or county wherein such person resides, provided that any petition for a refund for taxes timely paid shall be filed within one year of the date of payment. A copy of the petition shall be sent to the Commissioner at the time of the filing with the court. The original shall show, by certificate, the date of mailing such copy to the Commissioner.

B. In any proceeding under this section, the assessments by the Commissioner shall be presumed correct. The burden of proof shall be upon the petitioner to show that the assessment was incorrect and contrary to law. The circuit court is authorized to enter judgment against such person for the taxes, penalty, and interest due. The failure by any such person to appeal under the provisions of this section within the time period specified shall render the assessment, order, or decision of the Commissioner conclusively valid and binding upon such person. Such person or the Commissioner may petition the Court of Appeals from the final decision of the circuit court.

§ 58.1-2283. Jeopardy assessment.

If the Commissioner is of the opinion that the collection of any tax or any amount of tax required to be collected and paid under this chapter will be jeopardized by delay, the Commissioner shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy, including penalties and interest. In the case of a tax for a current period, the Commissioner may declare the taxable period of the taxpayer immediately terminated and shall mail or issue the notice of such finding and declaration to the taxpayer with a demand for immediate payment of the tax based on the period declared terminated, and such tax shall be immediately due and payable, whether or not the time otherwise allowed by law for filing a return and paying the tax has expired. Assessments provided for in this section shall become immediately due and payable. If any such tax, penalty or interest is not paid upon demand, the Commissioner may proceed to (i) collect the same by legal process, including but not limited to filing a memorandum of lien pursuant to § 58.1-2284, or (ii) accept a surety bond or other security deemed to sufficiently ensure full payment of the amount of tax, penalty and interest assessed against the taxpayer.

§ 58.1-2284. Memorandum of lien for collection of taxes.

A. If any taxes or fees, including penalties and interest, due under this chapter become delinquent or are past due, the Commissioner may file a memorandum of lien in the circuit court clerk's office of the county or city in which the taxpayer's place of business is located, or in which the taxpayer resides. If the taxpayer has no place of business or residence within the Commonwealth, such memorandum may be filed in the Circuit Court of the City of Richmond. A copy of such memorandum may also be filed in the clerk's office of all counties and cities in which the taxpayer owns real estate. Such memorandum shall be recorded in the judgment docket book and shall have the effect of a judgment in favor of the Commonwealth, to be enforced as provided in Article 19 (§ 8.01-196 et seq.) of Chapter 3 of Title 8.01, *mutatis mutandis*, except that a writ of fieri facias may be issued any time after the memorandum is filed. The lien on real estate shall become effective at the time the memorandum is filed in the jurisdiction in which the real estate is located.

B. Recordation of a memorandum of lien hereunder shall not affect the right to a refund or exoneration under this chapter nor shall an application for correction pursuant to § 58.1-2281 affect the power of the Commissioner to collect the tax, except as specifically provided in this chapter.

§ 58.1-2285. Period of limitations.

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

§ 58.1-2286. Waiver of time limitation on assessment of taxes.

If, before the expiration of the time prescribed for assessment of any tax levied pursuant to this title and assessable by the Department, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

§ 58.1-2287. Suits to recover taxes.

If any person fails to pay the tax or any civil penalty levied under this chapter, including accrued



1905 penalties and interest, when due, the Attorney General or the Commissioner may bring an appropriate  
1906 action for the recovery of such tax, penalty and interest, provided that if it is found that such failure to  
1907 pay was willful, judgment shall be rendered for double the amount of the tax or civil penalty found to  
1908 be due, with costs.

1909 § 58.1-2288. Liability of corporate or partnership officer; penalty.

1910 Any corporate or partnership officer who directs or causes the business of which he is a corporate  
1911 or partnership officer to fail to pay, collect, or truthfully account for and pay over any fuels tax for  
1912 which the business is liable to the Commonwealth or to a trustee, shall, in addition to other penalties  
1913 provided by law, be liable for a penalty in the amount of the tax evaded, or not paid, collected, or  
1914 accounted for and paid over. The penalty shall be assessed and collected in the same manner as such  
1915 taxes are assessed and collected. However, this penalty shall be dischargeable in bankruptcy  
1916 proceedings.

1917 Article 9.

1918 Disposition of Tax Revenues.

1919 § 58.1-2289. Disposition of tax revenue generally.

1920 A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by  
1921 the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall  
1922 be promptly paid into the state treasury and shall constitute special funds within the Commonwealth  
1923 Transportation Fund. Any balances remaining in these funds at the end of the year shall be available  
1924 for use in subsequent years for the purposes set forth in this chapter, and any interest income on such  
1925 funds shall accrue to these funds. Except as provided in § 33.1-23.03:1, no portion of the revenue  
1926 derived from taxes collected pursuant to § 58.1-2217, § 58.1-2249, or § 58.1-2701, and remaining after  
1927 authorized refunds for nonhighway use of fuel, shall be used for any purpose other than the  
1928 construction, reconstruction or maintenance of the roads and projects comprising the State Highway  
1929 System, the Interstate System and the secondary system of state highways and expenditures directly and  
1930 necessarily required for such purposes, including the retirement of revenue bonds.

1931 Revenues collected under this chapter may be also used for (i) contributions toward the construction,  
1932 reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law  
1933 and (ii) expenditures for the operation and maintenance of the Department of Transportation, the  
1934 Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority,  
1935 and the Department of Motor Vehicles as may be provided by law.

1936 The Governor is hereby authorized to transfer out of such fund an amount necessary for the  
1937 inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection  
1938 and analysis of gasoline for purity.

1939 B. The tax collected on each gallon of aviation fuel sold and delivered or used in this  
1940 Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this  
1941 special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the  
1942 Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the  
1943 laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of  
1944 airports and landing fields to which the public now has or which it is proposed shall have access, and  
1945 for the promotion of aviation in the interest of operators and the public generally.

1946 C. One-half cent of the tax collected on each gallon of fuel on which the refund has been paid at the  
1947 rate of seventeen cents per gallon, or in the case of diesel fuel fifteen and one-half cents per gallon, for  
1948 fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a  
1949 special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed  
1950 to make certain refunds and defray the costs of the research and educational phases of the agricultural  
1951 program, including supplemental salary payments to certain employees at the Virginia Polytechnic  
1952 Institute and State University, the State Department of Agriculture and Consumer Services and the  
1953 Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia  
1954 Agricultural Council.

1955 D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial  
1956 watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund  
1957 of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for  
1958 the purposes provided generally in subsection C of § 29.1-701, including acquisition, construction,  
1959 improvement and maintenance of public boating access areas on the public waters of this  
1960 Commonwealth and for other activities and purposes of direct benefit and interest to the boating public  
1961 and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial  
1962 fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to  
1963 be used for the construction, repair, improvement and maintenance of the public docks of this  
1964 Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction,  
1965 improvement and maintenance of the public docks shall be made according to a plan developed by the  
1966 Virginia Marine Resources Commission.



From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the propelling of watercraft, 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 to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § 33.1-223, a sum as established by the General Assembly.

E. Notwithstanding other provisions of this section, there shall be transferred from moneys collected pursuant to this section to a special fund within the Commonwealth Transportation 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 chapter and less taxes collected for aviation fuels.

#### Article 10. Floorstocks Tax.

##### § 58.1-2290. Floorstocks tax.

A. There is hereby levied a floorstocks tax on taxable motor fuel and alternative fuel held in storage as of the close of the business day preceding January 1, 1999. The floorstocks tax shall be payable by the person in possession of the fuel on January 1, 1999. The amount of the floorstocks tax on motor fuel shall be equal to the sum of (i) the tax rate specified by § 58.1-2217 for the type of fuel and (ii) the storage tank fee rate specified under § 62.1-44:34:13, multiplied by the gallons in storage as of the close of the business day preceding January 1, 1999. The amount of the floorstocks tax on alternative fuel shall be equal to the tax rate specified by subsection A of § 58.1-2249, multiplied by the gallons in storage as of the close of the business day preceding January 1, 1999.

B. Persons in possession of taxable fuel taxable fuel in storage as of the close of the business day preceding January 1, 1999, shall:

1. Take an inventory on January 1, 1999, to determine the gallons in storage for purposes of determining the floorstocks tax;

2. Report the gallons listed in subsection A, on forms provided by the Commissioner, not later than March 31, 1999; and

3. Remit the tax levied under this section with the report.

C. In determining the amount of floorstocks tax due under this section, the person may exclude the amount of taxable motor fuel in dead storage. "Dead storage" means the amount of taxable motor fuel that will not be pumped out of a storage tank because the fuel is below the mouth of the draw pipe. Such person may assume that the amount of motor fuel in dead storage is 200 gallons for a tank with a capacity of less than 10,000 gallons and 400 gallons for a tank with a capacity of 10,000 gallons or more. Alternatively, the amount of motor fuel in dead storage in a tank may be computed by using the manufacturer's conversion table for the tank and number of inches between the bottom of the tank and the mouth of the draw pipe. If the conversion table method is used to compute the amount of motor fuel in dead storage, the distance between the bottom of the tank and the mouth of the draw pipe will be assumed to be six inches, unless otherwise established.

##### § 58.1-2402. Levy.

A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale or use of motor vehicles in Virginia, other than (i) vehicles with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more, or (ii) a sale to or use by a person for rental as an established business or part of an established business or incidental or germane to such business.

There shall also be levied a tax upon the rental of a motor vehicle in Virginia, without regard to whether such vehicle is required to be licensed by the Commonwealth. However, such tax shall not be levied upon a rental to a person for re-rental as an established business or part of an established business, or incidental or germane to such business.

The amount of the tax to be collected shall be determined by the Commissioner by the application of the following rates against the gross sales price or gross proceeds:

1. Three percent of the sale price of each motor vehicle sold in Virginia; however, if such vehicle is manufactured, converted or retrofitted to use clean special fuels, as defined in § 58.1-210146.2-749.3., as a source of propulsion, the tax shall be one and one-half percent of the sale price of each motor vehicle sold in Virginia. If such motor vehicle is a manufactured home as defined in § 36-85.3, the tax shall be three percent of the sale price of each such manufactured home sold in the Commonwealth; if such vehicle is a mobile office as defined in § 58.1-2401, the tax shall be two percent of the sale price of each mobile office sold in the Commonwealth.

2028 2. Three percent of the sale price of each motor vehicle, or three percent of the sale price of each  
2029 manufactured home as defined in § 36-85.3, or two percent of the sale price of each mobile office as  
2030 defined in § 58.1-2401, not sold in Virginia but used or stored for use in the Commonwealth. When any  
2031 such motor vehicle or manufactured home is first used or stored for use in Virginia six months or more  
2032 after its acquisition, the tax shall be based on its current market value.

2033 3. Four percent of the gross proceeds from the rental in Virginia of any motor vehicle, except those  
2034 with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more.

2035 4. In addition to the tax levied pursuant to subdivision A 3, a tax of four percent of the gross  
2036 proceeds shall be levied on the rental in Virginia of any daily rental vehicle, whether or not such vehicle  
2037 is required to be licensed in the Commonwealth.

2038 5. The minimum tax levied on the sale of any motor vehicle in the Commonwealth shall be  
2039 thirty-five dollars, except as provided by those exemptions defined in § 58.1-2403.

2040 B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A 2, nor shall  
2041 the same transaction be taxed more than once under either subdivision. A motor vehicle subject to the  
2042 tax imposed under subdivision A 3 shall be subject to the tax under either subdivision A 1 or A 2 when  
2043 it ceases to be used for rental as an established business or part of an established business, or incidental  
2044 or germane to such business.

2045 C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2 of  
2046 § 58.1-2403 shall be subject to the tax, based on the current market value when such vehicle is no  
2047 longer owned, rented or used by the United States government or any governmental agency, or the  
2048 Commonwealth of Virginia or any political subdivision thereof. Further, any motor vehicle, trailer or  
2049 semitrailer exempt from the tax imposed by this chapter under subdivision 11 of § 58.1-2403 or  
2050 §§ 46.2-663 through 46.2-674 shall be subject to the tax, based on the current market value, when such  
2051 vehicle is subsequently licensed to operate on the highways of this Commonwealth.

2052 D. Any person who with intent to evade or to aid another person to evade the tax provided for  
2053 herein, falsely states the selling price of a vehicle on a bill of sale, assignment of title, application for  
2054 title, or any other document or paper submitted to the Commissioner pursuant to any provisions of this  
2055 title or Title 46.2, shall be guilty of a Class 3 misdemeanor.

2056 E. Effective January 1, 1997, any amount designated as a "processing fee" and any amount charged  
2057 by a dealer for processing a transaction, which is required to be included on a buyer's order pursuant to  
2058 subdivision 10 of § 46.2-1530, shall be subject to the tax.

2059 § 58.1-2423.1. Refund for vehicles using clean special fuel.

2060 If a motor vehicle is converted or retrofitted to use clean special fuels, as defined in  
2061 § 58.1-240146.2-749.3., within six months of the date of titling in the Commonwealth, the vehicle owner  
2062 shall be entitled to a refund of one-half of the motor vehicle sales and use tax paid at the time of titling,  
2063 provided titling occurred on or after January 1, 1996, and before January 1, 2000.

2064 The claim for refund shall be in such form as the Commissioner shall prescribe and shall include  
2065 documentation to verify that conversion of the motor vehicle took place within six months from the date  
2066 of titling in the Commonwealth. It shall be filed with the Commissioner within twelve months from the  
2067 date of payment of the tax.

2068 § 58.1-3506. Other classifications of tangible personal property for taxation.

2069 A. The items of property set forth below are each declared to be a separate class of property and  
2070 shall constitute a classification for local taxation separate from other classifications of tangible personal  
2071 property provided in this chapter:

2072 1. Boats or watercraft weighing five tons or more;

2073 2. Aircraft having a maximum passenger seating capacity of no more than fifty which are owned and  
2074 operated by scheduled air carriers operating under certificates of public convenience and necessity issued  
2075 by the State Corporation Commission or the Civil Aeronautics Board;

2076 3. All other aircraft not included in subdivision A 2 and flight simulators;

2077 4. Antique motor vehicles as defined in § 46.2-100 which may be used for general transportation  
2078 purposes as provided in subsection C of § 46.2-730;

2079 5. Tangible personal property used in a research and development business;

2080 6. Heavy construction machinery, including but not limited to land movers, bulldozers, front-end  
2081 loaders, graders, packers, power shovels, cranes, pile drivers, forest harvesting equipment and ditch and  
2082 other types of diggers;

2083 7. Generating equipment purchased after December 31, 1974, for the purpose of changing the energy  
2084 source of a manufacturing plant from oil or natural gas to coal, wood, wood bark, wood residue, or any  
2085 other alternative energy source for use in manufacturing and any cogeneration equipment purchased to  
2086 achieve more efficient use of any energy source. Such generating equipment and cogeneration equipment  
2087 shall include, without limitation, such equipment purchased by firms engaged in the business of  
2088 generating electricity or steam, or both;

2089 8. Vehicles without motive power, used or designed to be used as manufactured homes as defined in

§ 36-85.3;

9. Computer hardware used by businesses primarily engaged in providing data processing services to other nonrelated or nonaffiliated businesses;

10. Privately owned pleasure boats and watercraft used for recreational purposes only;

11. Privately owned vans with a seating capacity for twelve or more persons used exclusively pursuant to a ridesharing arrangement as defined in § 46.2-1400;

12. Motor vehicles specially equipped to provide transportation for physically handicapped individuals;

13. Motor vehicles (i) owned by members of a volunteer rescue squad or volunteer fire department or (ii) leased by members of a volunteer rescue squad or volunteer fire department if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle which is owned by each volunteer rescue squad member or volunteer fire department member, or leased by each volunteer rescue squad member or volunteer fire department member if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle, may be specially classified under this section, provided the volunteer rescue squad member or volunteer fire department member regularly responds to emergency calls. The volunteer shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief or head of the volunteer organization, that the volunteer is a member of the volunteer rescue squad or fire department who regularly responds to calls or regularly performs other duties for the rescue squad or fire department, and the motor vehicle owned or leased by the volunteer rescue squad member or volunteer fire department member is identified. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline. In any county which prorates the assessment of tangible personal property pursuant to § 58.1-3516, a replacement vehicle may be certified and classified pursuant to this subsection when the vehicle certified as of the immediately prior January date is transferred during the tax year;

14. Motor vehicles (i) owned by auxiliary members of a volunteer rescue squad or volunteer fire department or (ii) leased by auxiliary members of a volunteer rescue squad or volunteer fire department if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle which is regularly used by each auxiliary volunteer fire department or rescue squad member may be specially classified under this section. The auxiliary member shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief or head of the volunteer organization, that the volunteer is an auxiliary member of the volunteer rescue squad or fire department who regularly performs duties for the rescue squad or fire department, and the motor vehicle is identified as regularly used for such purpose; however, if a volunteer rescue squad or fire department member and an auxiliary member are members of the same household, that household shall be allowed only one special classification under this subdivision or subdivision 13 of this section. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

15. Motor vehicles owned by a nonprofit organization and used to deliver meals to homebound persons or provide transportation to senior or handicapped citizens in the community to carry out the purposes of the nonprofit organization;

16. Privately owned camping trailers and motor homes as defined in § 46.2-100 which are used for recreational purposes only;

17. One motor vehicle owned and regularly used by a veteran who has either lost, or lost the use of, one or both legs, or an arm or a hand, or who is blind or who is permanently and totally disabled as certified by the Department of Veterans' Affairs. In order to qualify the veteran shall provide a written statement to the commissioner of revenue or other assessing officer from the Department of Veterans' Affairs that the veteran has been so designated or classified by the Department of Veterans' Affairs as to meet the requirements of this section, and that his disability is service-connected. For purposes of this section a person is blind if he meets the provisions of § 46.2-739;

18. Motor vehicles (i) owned by persons who have been appointed to serve as auxiliary police officers pursuant to Article 4 3 (§ ~~45.1-159.2~~ 15.2-1731 et seq.) of Chapter 3 17 of Title ~~45.4~~ 15.2 or (ii) leased by persons who have been so appointed to serve as auxiliary police officers if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle which is regularly used by each auxiliary police officer to respond to auxiliary police duties may be specially classified under this section. In order to qualify for such classification any auxiliary police officer who applies for such classification shall identify the vehicle for which this

classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a certification from the governing body which has appointed such auxiliary police officer or from the official who has appointed such auxiliary officers. That certification shall state that the applicant is an auxiliary police officer who regularly uses a motor vehicle to respond to auxiliary police duties, and it shall state that the vehicle for which the classification is sought is the vehicle which is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

19. Machines and tools owned by a commercial air carrier which uses such machines and tools in a commercial airline maintenance, repair, and rebuilding facility, which has an assessed value of at least \$100,000,000 and which is located on or contiguous to an airport;

20. Motor vehicles which use clean special fuels as defined in § 58.1-210146.2-749.3;

21. Wild or exotic animals kept for public exhibition in an indoor or outdoor facility which is properly licensed by the federal government, the Commonwealth, or both, and which is properly zoned for such use. "Wild animals" means any animals which are found in the wild, or in a wild state, within the boundaries of the United States, its territories or possessions. "Exotic animals" means any animals which are found in the wild, or in a wild state, and are native to a foreign country;

22. Furniture, office, and maintenance equipment, exclusive of motor vehicles, which are owned and used by an organization whose real property is assessed in accordance with § 58.1-3284.1 and which is used by that organization for the purpose of maintaining or using the open or common space within a residential development;

23. Motor vehicles, trailers and semitrailers with a gross vehicle weight of 10,000 pounds or more used to transport property for hire by a motor carrier engaged in interstate commerce;

24. All tangible personal property employed in a trade or business other than that described in subdivisions A 1 through A 18 of § 58.1-3503;

25. Programmable computer equipment and peripherals employed in a trade or business; and

26. Tangible personal property of Habitat for Humanity and local affiliates or subsidiaries thereof.

B. The governing body of any county, city or town may levy a tax on the property enumerated in subsection A at different rates from the tax levied on other tangible personal property. The rates of tax and the rates of assessment shall (i) for purposes of subdivisions 1, 2, 3, 4, 6, 9 through 18, 20 through 22, 24, 25 and 26 of subsection A, not exceed that applicable to the general class of tangible personal property, (ii) for purposes of subdivisions A 5, A 7, A 19, and A 23, not exceed that applicable to machinery and tools, and (iii) for purposes of subdivision A 8, equal that applicable to real property.

§ 58.1-3941. What may be distrained for taxes.

Any goods or chattels, money and bank notes in the county, city or town belonging to the person or estate assessed with taxes, levies or other charges collected by the treasurer may be distrained therefor by the treasurer, sheriff, constable or collector. Property subject to levy or distress for taxes shall be liable to levy or distress in the hands of any person for taxes, penalties and interest thereon, except that any highway vehicle as defined in § 58.1-210158.1-2201 purchased by a bona fide purchaser for value shall not be liable to levy or distress for such taxes unless the purchaser knew at the time of purchase that the taxes had been specifically assessed against such vehicle.

Property on which taxes were specifically assessed, whether assessed per item or in bulk, shall be subject to distress after it passes into the hands of a bona fide purchaser for value.

§ 58.1-3942. Security interests no bar to distress.

No security interest in goods or chattels shall prevent the same from being distrained and sold for taxes or levies assessed thereon, no matter in whose possession they may be found.

Prior to such sale for distress, the treasurer, sheriff, constable or collector, or other party conducting the sale shall give notice to any secured party of record as his name and address shall appear on the records of the Department of Motor Vehicles, the Department of Game and Inland Fisheries, the State Corporation Commission, or in the office of the clerk of any circuit court where the debtor has resided to the knowledge of the party to whom the tax is owing during a one-year period prior to the sale. Notice shall also be given to any secured party of whom the party to whom the tax is owing shall have knowledge.

A security interest perfected prior to any distraint for taxes shall have priority over all taxes, except those specifically assessed either per item or in bulk against the goods and chattels distrained. Taxes specifically assessed either per item or in bulk against the goods and chattels distrained shall have priority over all security interests. For purposes of this section a merchant's capital tax shall be deemed to be specifically assessed against all inventory in the merchant's possession at the time of distraint, or at the time such inventory is repossessed by the holder of a security interest therein. For purposes of this section, taxes specifically assessed in bulk means an assessment against the specific class of property distrained.

Notwithstanding any provision of this section to the contrary, no highway vehicle as defined in § 58.1-2101-58.1-2201 purchased by a bona fide purchaser for value from the person or estate assessed with taxes shall be liable to levy or distress for such taxes unless the purchaser knew at the time of purchase that the taxes had been specifically assessed against such vehicle.

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

A. In order to generate revenue for the Fund and to make the Fund available to owners and operators of underground storage tanks and to owners and operators of aboveground storage tanks, 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; aviation motor fuel; diesel fuel; dyed diesel fuel and heating oil~~ gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil, as such terms are defined in § 58.1-2101, except:

1. ~~Motor fuel, diesel fuel, dyed diesel fuel or heating oil~~ 58.1-2201; however, such fee shall not be imposed on (i) gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered to the United States or its departments, agencies and instrumentalities thereof;

2. Motor fuel sold to a duly licensed dealer; or

3. Diesel fuel, dyed diesel fuel or 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 for the exclusive use by the United States or its departments, agencies and instrumentalities, (ii) alternative fuel as defined in § 58.1-2201, or (iii) aviation jet fuel as defined in § 58.1-2201.

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 212 (§ 58.1-2200 et seq.) of Title 58.1, except § 58.1-2129 58.1-2226, § 58.1-2233, § 58.1-2236, § 58.1-2238, and § 58.1-2259 shall not apply.

C. Any person who purchases ~~motor fuel, aviation motor fuel, diesel fuel,~~ gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, or 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 highway 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 the regulations of the Department of Motor Vehicles in effect on the effective date of this act shall continue in effect to the extent they are not in conflict with this act and shall be deemed to be regulations promulgated under this act.

3. That Chapter 21 (§§ 58.1-2100 through 58.1-2147) of Title 58.1 of the Code of Virginia is repealed.

4. That the provisions of this act shall become effective on January 1, 1999.