# GUIDELINES AND RULES FOR THE MOTOR VEHICLE FUEL SALES TAX

January 31, 2008

These guidelines and rules are published by the Department of Taxation ("TAX") to provide guidance to dealers of motor vehicle fuels regarding the new Motor Vehicle Fuel Sales Tax authorized by *Va. Code* § 58.1-1724.2 *et seq*., enacted by House Bill 3202 (Acts of Assembly 2007, Chapter 896), that will be imposed by the Hampton Roads Transportation Authority beginning April 1, 2008.

These guidelines are also applicable to the Motor Vehicle Fuel Sales Tax currently imposed in the Northern Virginia Transportation District and in the member localities of the Potomac and Rappahannock Transportation Commission pursuant to *Va. Code* § 58.1-1719 *et seq*. These guidelines supplement TAX's existing Motor Vehicle Fuels Sales Tax Regulations (23 *Virginia Administrative Code ("VAC")* 10-240-10 *et seq*.). To the extent that there is a conflict between the existing regulations and these guidelines, these guidelines supersede the regulations.

House Bill 3202 provides that the development and publication of these guidelines and rules is exempt from the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000 *et seq*.). TAX has worked with affected dealers to develop these guidelines and rules. As necessary, additional guidelines and rules will be published and posted on TAX's website, www.tax.virginia.gov.

## Imposition of Tax

Effective July 1, 2007, the Hampton Roads Transportation Authority was authorized to impose in its member localities a sales tax on motor vehicle fuels sold at retail at the rate of two percent of the retail price of such fuels sold within such county or city. The member localities of the Hampton Roads Transportation Authority are the Counties of Isle of Wight, James City, and York and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg. The Authority has voted to impose the tax effective April 1, 2008. (Source: *Va. Code* § 58.1-1724.2 *et seq*.)

The Motor Vehicle Fuel Sales Tax is currently imposed in the Northern Virginia Transportation District and the Potomac and Rappahannock Transportation Commission. The member localities of the Northern Virginia Transportation District are the Counties of Arlington, Fairfax and Loudoun and the Cities of Alexandria, Fairfax, and Falls Church; and the member localities of the Potomac and Rappahannock Transportation Commission are the Counties of Prince William and Stafford and the Cities of Fredericksburg, Manassas, and Manassas Park. (Source: *Va. Code* § 58.1-1719 *et seq*.)

The Motor Vehicle Fuel Sales Tax shall be subject to the provisions of the Virginia

Retail Sales and Use Tax Act except that the exemption provided for motor vehicle fuels under *Va. Code* § 58.1-609.1 and the bracket system provided in such Act shall not be applicable. (Source: *Va. Code* § 58.1-1720; *Va. Code* § 58.1-1724.3)

The rate of the tax is two percent on the sales price of motor vehicle fuel, which includes applicable federal and state excise taxes on motor fuels. (Source: *Va. Code* §§ 58.1-1720 and 58.1-1724.3) Separately stated federal diesel fuel excise taxes may be excluded from the sales price. Any dealer who fails to exclude the federal diesel excise tax when collecting any sales tax may not deduct the federal diesel excise tax from his taxable sales. (Source: Public Document ("PD") 88-68 (April 26, 1988))

The tax must be included in the unit measure of fuel when retail sales of fuels are made through a pump and the bracket system set forth in Form FT-106, Motor Vehicle Fuel Sales Tax Bracket System, which is available for download at TAX's website at www.tax.virginia.gov, must be used for determining the proper amount of tax to be added to the sales price of each unit. The bracket system does not relieve the dealer from the liability of paying an amount equal to two percent of his gross taxable sales. The tax on retail sales of fuels that are not made through a pump is computed at a straight two percent on the sales price and must be separately stated from the selling price. One-half cent or more is treated as one cent. (Source: 23 *VAC* 10-240-80)

**Definitions**

Terms used in the Motor Vehicle Fuel Sales Tax have the same meaning as those used in the Retail Sales and Use Tax, unless defined otherwise, as follows:

"Dealer" includes every person who: 1) manufactures or produces tangible personal property for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth; 2) imports or causes to be imported into this Commonwealth tangible personal property from any state or foreign country, for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth; 3) sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, tangible personal property; 4) has sold at retail, used, consumed, distributed, or stored for use or consumption in this Commonwealth, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal property; 5) leases or rents tangible personal property for a consideration, permitting the use or possession of such property without transferring title thereto; 6) is the lessee or rentee of tangible personal property and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title thereto; 7) as a representative, agent, or solicitor, of an out-of-state principal, solicits, receives and accepts orders from persons in this Commonwealth for future delivery and whose principal refuses to register as a dealer under *Va. Code* § 58.1-613; or 8) becomes liable to and owes this Commonwealth any

amount of tax imposed by Chapter 6 of Title 58.1 of the *Va. Code*, whether he holds, or is required to hold, a certificate of registration under *Va. Code* § 58.1-613. (Source: *Va. Code* § 58.1-612)

"Motor vehicle" means every vehicle, except for a mobile office, which is self propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle, every device in, upon and by which any person or property is, or can be, transported or drawn upon a highway, but excluding devices moved by human or animal power, devices used exclusively upon stationary rails or tracks and vehicles, other than manufactured homes, used in this Commonwealth but not required to be licensed by the Commonwealth. (Source: *Va. Code* § 58.1-602; *Va. Code* § 58.1-2401)

"Motor vehicle fuel" means all products commonly or commercially known, advertised, offered for sale, sold or used as gasoline, including casinghead or natural gasoline, and all other types of additives when mixed or blended into gasoline, regardless of their classification of uses; and all combustible gases and liquid, used or suitable for use in any internal combustion engine or motor for the generation of power to propel motor vehicles on the public highways, except aviation fuel or any type of fuel used in an aircraft, rocket or similar device. Motor vehicle fuel subject to the Motor Vehicle Fuel Sales Tax are those fuels subject to tax under Chapter 22 of Title 58.1 of the *Va. Code*, except aviation fuel or any type of fuel used in an aircraft, rocket or similar device. (Source: 23 *VAC* 10-240-260)

"Person" means any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of such term shall mean the same as the singular. (Source: *Va. Code* § 58.1-602)

"Place of business" includes, but is not limited to, a store, a sales or other office, a warehouse or any storage facility. For determining the place of business from which a retail sale is made, "place of business" means the business location that first takes the purchaser's order for motor vehicle fuel whereby the delivery is made within a Transportation Authority. (Source: 23 *VAC* 10-240-320)

"Retail sale" or a "sale at retail" means a sale to a consumer or to any person for any purpose other than resale. (Source: *Va. Code* § 58.1-602)

"Retailer" means every person engaged in the business of making sales at retail, or for distribution, use, consumption, or storage to be used or consumed in the Commonwealth. (Source: *Va. Code* § 58.1-602)

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible

personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale. (Source: *Va. Code* § 58.1-602)

"Sales price" means the total amount for which tangible personal property or services are sold, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. Sales price shall not include (i) any cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price; or (iii) separately stated local property taxes collected. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles. (Source: *Va. Code* § 58.1-602)

"Transportation Authority" means the Hampton Roads Transportation Authority, the Northern Virginia Transportation District, or the Potomac and Rappahannock Transportation Commission. (Source: *Va. Code* § 58.1-1720; Enactment Clause 6, House Bill 3202 (Acts of Assembly 2007, Chapter 896); *Va. Code* § 58.1-1724.3)

"Wholesaler" (refiner, commission distributor or independent jobber), as distinguished from a retailer, means every person who sells for resale. If a wholesaler sells to any user or consumer, however large or small, he becomes a retailer for those sales. (Source: 23 *VAC* 10-240-470)

**Motor Vehicles**

For the purposes of this tax, "motor vehicle" includes, but is not limited to:

- "Automobile and Watercraft Trailers" - any tractor truck, lowboy, vehicle, or combination, including vehicles or combinations that transport motor vehicles or watercraft on their power unit, designed and used exclusively for the transportation of motor vehicles or watercraft. (Source: *Va. Code* § 46.2-100)

- "Camping Trailers" - every vehicle that has collapsible sides and contains sleeping quarters but may or may not contain bathing and cooking facilities and is designed to be drawn by a motor vehicle. (Source: *Va. Code* § 46.2-100)

- "Charter Bus" - any motor vehicle manufactured with a minimum seating capacity of 32 passengers or more, excluding the driver. (Source: *Va. Code* § 46.2-2000)

- "Commuter Bus" - any motor vehicle which has a seating capacity of more than seventeen passengers, is used primarily to transport workers directly to and from factories, plants, offices, or other places where they work. (Source: *Va. Code* § 46.2-1175)

- "Minibus" - any motor vehicle having a seating capacity of not less than seven nor more than 31 passengers, including the driver, and used in the transportation of passengers. (Source: *Va. Code* § 46.2-2000)

- “Motorcycles” - every motor vehicle designed to travel on not more than three wheels in contact with the ground and is capable of traveling at speeds in excess of 35 miles per hour. (Source: *Va. Code* § 46.2-100)

- "Motor Homes" or “Recreational Vehicles” - every motor vehicle with a normal seating capacity of not more than ten persons, including the driver, designed primarily for use as living quarters for human beings. (Source: *Va. Code* § 46.2-1900)

- “Passenger Cars” - every motor vehicle other than a motorcycle designed and used primarily for the transportation of no more than 10 persons including the driver. (Source: *Va. Code* § 46.2-100)

- “Pickup or Panel Trucks” - every motor vehicle designed for the transportation of property and having a registered gross weight of 7,500 pounds or less. (Source: *Va. Code* § 46.2-100)

- “Semitrailers” - every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests on or is carried by another vehicle. (Source: *Va. Code* § 46.2-100)

- “Tow Trucks” - every motor vehicle for hire (i) designed to lift, pull, or carry another vehicle by means of a hoist or other mechanical apparatus and (ii) having a manufacturer's gross vehicle weight rating of at least 10,000 pounds. "Tow truck" also includes vehicles designed with a ramp on wheels and a hydraulic lift with a capacity to haul or tow another vehicle, commonly referred to as "rollbacks." (Source: *Va. Code* § 46.2-100)

- “Tractor Trucks” - every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto. (Source: *Va. Code* § 46.2-100)

- “Trailers” - every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, including manufactured homes. (Source: *Va. Code* § 46.2-100)

- "Travel Trailers"- every vehicle designed to provide temporary living quarters of such size or weight as not to require special highway movement permits when towed by a motor vehicle and having a gross trailer area less than 320 square feet. (Source: *Va. Code* § 46.2-1900)

- “Trucks” - every motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds. (Source: *Va. Code* § 46.2-100)

For the purposes of this tax, “motor vehicle” does not include:

- “All-Terrain Vehicles” - any three-wheeled or four-wheeled motor vehicle powered by a gasoline or diesel engine and generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering that is intended for off-road use by an individual rider on various types of unpaved terrain. (Source: *Va. Code* § 46.2-100)

- "Electric Personal Assistive Mobility Device" - a self-balancing two-nontandem-wheeled device that is designed to transport only one person and powered by an electric propulsion system that limits the device's maximum speed to 15 miles per hour or less. (Source: *Va. Code* § 46.2-100)

- "Electric Power-Assisted Bicycle" - a vehicle that travels on not more than three wheels in contact with the ground and is equipped with (i) pedals that allow propulsion by human power and (ii) an electric motor with an input of no more than 1,000 watts that reduces the pedal effort required of the rider. (Source: *Va. Code* § 46.2-100)

- “Farm Tractors” - every motor vehicle designed and used as a farm, agricultural, or horticultural implement for drawing plows, mowing machines, and other farm, agricultural, or horticultural machinery and implements including self-propelled mowers designed and used for mowing lawns. (Source: *Va. Code* § 46.2-100)

- “Golf Carts” - every self-propelled vehicle that is designed to transport persons playing golf and their equipment on a golf course. (Source: *Va. Code* § 46.2-100)
- “Manufactured Homes” - any structure subject to federal regulation, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the

required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. (Source: *Va. Code* § 46.2-100)

- "Mobile Offices" - any industrialized building unit not subject to the federal regulation, which may be constructed on a chassis for the purpose of towing to the point of use and designed to be used with or without a permanent foundation, for commercial use and not for residential use; or two or more such units separately towable, but designed to be joined together at the point of use to form a single commercial structure, and which may be designed for removal to, and installation or erection on other sites. (Source: *Va. Code* § 58.1-2401)

- "Mopeds" - every vehicle that travels on not more than three wheels in contact with the ground that has (i) a seat that is no less than 24 inches in height, measured from the middle of the seat perpendicular to the ground and (ii) a gasoline, electric, or hybrid motor that displaces less than 50 cubic centimeters. (Source: *Va. Code* § 46.2-100)

- "Motorized Skateboards or Scooters" - every vehicle, regardless of the number of its wheels in contact with the ground, that (i) has no seat, but is designed to be stood upon by the operator, (ii) has no manufacturer-issued vehicle identification number, and (iii) is powered by an electric motor having an input of no more than 1,000 watts or a gasoline engine that displaces less than 36 cubic centimeters. (Source: *Va. Code* § 46.2-100)

- "Snowmobiles"- every self-propelled vehicle designed to travel on snow or ice, steered by skis or runners, and supported in whole or in part by one or more skis, belts, or cleats. (Source: *Va. Code* § 46.2-100)

- "Utility Vehicles" - any vehicle that is (i) designed for off-road use, (ii) powered by an engine of no more than 25 horsepower, and (iii) used for general maintenance, security, agricultural, or horticultural purposes. (Source: *Va. Code* § 46.2-100)

- "Watercraft or Boats"- any vehicle used on waterways. (Source: *Va. Code* § 58.1-2201)

## Exemptions

All sales of motor vehicle fuel are subject to the motor vehicle fuel sales tax until the contrary is established. The burden of proving that the tax does not apply rests with the dealer unless he takes, in good faith from the purchaser, a certificate of exemption indicating that the fuel is exempt under the law. The certificate will remain in effect except upon notice from the TAX that it is no longer acceptable. However, a certificate that is incomplete, invalid, infirm or inconsistent on its face is never acceptable, either before or after notice. (Source: *Code of Va*. § 58.1-623)

Certificates of exemption in the various categories are available on TAX's website, www.tax.virginia.gov. Each certificate explains its use, and may be reproduced by the dealer for use on purchase orders, sales slips or other documents relating to the transaction. Reasonable care and judgment must be exercised by all concerned to prevent the giving or receiving of false, fraudulent or bad faith exemption certificates. An exemption certificate cannot be used to make a tax free purchase of fuel not covered by the exact wording of the certificate.

In the event that a dealer fails to collect the Motor Vehicle Fuel Sales Tax due on the sale of taxable motor vehicle fuel, the dealer is liable for the payment of the tax.

Exemptions from the Motor Vehicle Fuel Sales Tax include, but are not limited to, the following exemptions:

- Motor vehicle fuel sold to the United States, the Commonwealth or political subdivisions of the Commonwealth if the purchases are pursuant to required official purchase orders to be paid for out of public funds; the United States Government National credit card and the Commonwealth of Virginia credit card may be used in lieu of a Certificate of Exemption when purchasing fuel from any retailer or distributor in localities subject to the motor vehicle fuel sales tax. (Source: *Va. Code* § 58.1-609.1(4))

- Motor vehicle fuel sold to farmers for use in farm machinery or motor vehicles, licensed or nonlicensed, used in agricultural production for market if it is to be so used at the time of purchase. Any fuel not used in agricultural production is subject to the tax at the time of purchase. (Source: *Va. Code* § 58.1-609.2(1))

- Motor vehicle fuel sold to a commercial waterman to operate machinery used in extracting fish, bivalves or crustaceans from water for commercial purposes; motor vehicle fuel for use in a boat is taxable at the time of purchase. (Source: *Va. Code* § 58.1-609.2(4))

- Motor vehicle fuel sold to harvesters of forest products who use the motor vehicle fuel in commercial tree farming. (Source: *Va. Code* § 58.1-609.2(6))

- Motor vehicle fuel purchased for use that would qualify for the manufacturing exemption. (Source: *Va. Code* § 58.1-609.3(2))

- Motor vehicle fuel for use or consumption aboard ships or vessels engaged in intercoastal trade between ports in this state and ports in other states of the United States; or in foreign commerce between ports in this state and ports in foreign countries when delivered directly to such ships or vessels. Motor vehicle fuel used directly in the building, conversion or repair of such ships and vessels is also exempt. (Source: *Va. Code* § 58.1-609.3(4))

- Motor vehicle fuel sold to an airline and used directly in the rendition of its common carrier service in interstate, intrastate or foreign commerce operations providing "scheduled air service." "Scheduled air service" as defined in *Va. Code* § 58.1-1501, means service provided by a single air carrier consisting of regularly scheduled flights to one or more Virginia airports at least five days per week. (Source: *Va. Code* § 58.1-609.3(6))

- Motor vehicle fuel purchased for the use or consumption of any nonprofit organization that holds a valid certificate of exemption from TAX, or any nonprofit church that holds a valid self-executing certificate of exemption, that is exempt from paying state and local Retail Sales and Use Tax. (Source: *Va. Code* § 58.1-609.11)

- Sales of fuel delivered outside the state or a Transportation Authority in the seller's vehicle. (Source: 23 *VAC* 10-240-230)

- Sales of fuel delivered outside the state or a Transportation Authority by an independent trucker hired by the seller. (Source: 23 *VAC* 10-240-230)

- Sales of fuel delivered by the seller to a common carrier or a licensed contract carrier for transportation outside the state or a Transportation Authority and purchases for resale and immediate transportation out of this state or a Transportation Authority, provided a valid certificate of exemption is secured by the Virginia seller. (Source: 23 *VAC* 10-240-230)

**Refunds**

Any person who purchases fuels and pays the Motor Vehicle Fuel Sales Tax and receives a refund from the Department of Motor Vehicles (“DMV”) of the Virginia Fuels Tax imposed pursuant to Chapter 22 of Title 58.1 of the *Va. Code* on such purchase may, within 30 days after receiving the refund, file a refund claim with TAX for the Motor Vehicle Fuel Sales Tax. Refunds of the Virginia Fuels Tax are available in the following situations:

- A refund of the Virginia Fuels Tax paid for the purchase of fuel in quantities of five gallons or more at any time shall be granted in accordance with the provisions of *Va. Code* § 58.1-2261 to any person who establishes to the satisfaction of DMV that such person has paid the tax levied upon any fuel:

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

    - Used by a governmental entity, provided persons operating under contract with a governmental entity shall not be eligible for such refund;

- Sold and delivered to an organization described in *Va. Code* § 58.1-2226(2) or *Va. Code* § 58.1-2250(2) for its exclusive use in the operation of an aircraft;

- Used by an organization described in *Va. Code* § 58.1-2226(2) or *Va. Code* § 58.1-2250(2) for its exclusive use in the operation of an aircraft, provided persons operating under contract with such an organization shall not be eligible for such refund;

- Purchased by a licensed exporter and subsequently transported and delivered by such licensed exporter to another state for sales or use outside the boundaries of the Commonwealth if the tax applicable in the destination state has been paid, provided a refund shall not be granted pursuant to this section on any fuel which is transported and delivered outside of the Commonwealth in the fuel supply tank of a highway vehicle or an aircraft;

- Used by any person performing transportation under contract or lease with any transportation district for use in a highway vehicle controlled by a Transportation Authority and used in providing transit service by the Transportation Authority by contract or lease, provided the refund shall be paid to the person performing such transportation;

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

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

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

- Used by buses owned or solely used by a private, nonprofit, nonreligious school while being used to transport children to and from such school or from such school to and from educational or athletic activities;

- Used by any county or city school board or any private, nonprofit, nonreligious school contracting with a private carrier to transport children to and from public schools or any private, nonprofit, nonreligious school,

provided the tax shall be refunded to the private carrier performing such transportation;

- Used in operating or propelling the equipment of volunteer firefighting companies and of volunteer rescue squads within the Commonwealth used actually and necessarily for firefighting and rescue purposes;

- Used in operating or propelling motor equipment belonging to counties, cities and towns, if actually used in public activities;

- Used for a purpose other than in operating or propelling highway vehicles, watercraft or aircraft (However, fuels used in operating or propelling commercial, recreational and pleasure watercraft are eligible for a refund, *see below*);

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

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

- Used in operating or propelling vehicles used solely for racing other vehicles on a racetrack;

- Used in operating or propelling unlicensed highway vehicles and other unlicensed equipment used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or lessee of such vehicles and not operated on or over any highway for any purpose other than to move it in the manner and for the purpose mentioned;

- Used in operating or propelling commercial watercraft. The amount of refund shall be equal to the amount of the taxes paid less one and one-half cents per gallon on such fuel so used which shall be paid by DMV into the state treasury to be credited as provided in *Va. Code* § 58.1-2289 D;

- Used in operating stationary 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; or

- Used in operating or propelling recreational and pleasure watercraft.

(Source: *Va. Code* § 58.1-2259)

- Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete highway vehicle, or a bulk feed delivery truck, 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 35 percent of the tax paid on such fuel. A "bulk feed delivery truck" means bulk animal feed delivery trucks utilizing power take-off (PTO) driven auger or air feed discharge systems for off-road deliveries of animal feed. (Source: *Va. Code* § 58.1-2259)

- Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, 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 55 percent of the tax paid on such fuel. (Source: *Va. Code* § 58.1-2259)

- Any person purchasing fuel 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 *Va. Code* §§ 46.2-2005 and 58.1-2204 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 40 miles, one way, in a single day between their place of abode and their place of employment, shopping areas or schools. (Source: *Va. Code* § 58.1-2259)

- If the applicant for a refund is a taxicab service, he shall hold a valid permit from DMV 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. (Source: *Va. Code* § 58.1-2259)

- Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, 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 55 percent of the tax paid on such fuel. (Source: *Va. Code* § 58.1-2259)

- Refunds resulting from any fuel shipments diverted from Virginia shall be based on the amount of tax paid for the fuel less discounts allowed by § 58.1-2233. (Source: *Va. Code* § 58.1-2259)

Claims received more than 30 days from receipt of the refund from the DMV will not be honored unless the fuel is specifically exempt from the Motor Vehicle Fuel Sales Tax. Refunds authorized will be for the amount of tax paid by the person filing the claim. (Source: 23 *VAC* 10-240-350 A)

When any person pays the Motor Vehicle Fuel Sales Tax to a dealer and the use of the fuel is specifically exempt, such person may file a claim for refund with the dealer to whom the tax was paid. The dealer may then file a claim for refund with TAX. The dealer must show that the tax was paid to TAX, collected from his customer and subsequently refunded to his customer. Refunds authorized will be for the amount of tax paid by the dealer on this return less any applicable dealer discount. Refunds cannot be authorized on exempt transactions unless the dealer files a claim within three years from the last day prescribed by law for the timely filing of the return on which the tax was paid to TAX. (Source: 23 *VAC* 10-240-350 B)

Forms for filing claims for refund of the Motor Vehicle Fuel Sales Tax will be furnished by TAX upon request. (Source: 23 *VAC* 10-240-350)

**Taxable Motor Fuel Sales**

Taxable sales of motor vehicle fuel include, but are not limited to, the following:

- Motor vehicle fuel sold by or through post exchanges, ship stores, ship service stores, commissaries, filing stations, licensed traders, other similar agencies or by any person located on United States military installations when not for the exclusive use of the United States. (Source: PD 85-75 (April 4, 1985))

- Motor vehicle fuel sold at Washington National Airport. (Source: PD 92-206 (October 21, 1992))

- Motor vehicle fuel purchased for use in a boat. Marine fuel that is subject to the fuel tax imposed under Chapter 22 of Title 58.1 of the *Va. Code* is also subject to the Motor Vehicle Fuel Sales Tax. (Source: *Va. Code* § 58.1-1724.3)

- Motor vehicle fuel purchased at retail by a contract carrier whereby delivery of such fuel is made within a Transportation Authority. (Source: PD 05-77 (May 26, 2005))

- Motor vehicle fuel sold to persons engaged in the business of leasing or renting motor vehicles for use in such motor vehicles. (Source: *Va. Code* § 58.1-1724.3)

## Sales Price

For purposes of the Motor Vehicle Fuel Sales Tax, the sales price does not include the following amounts:

- Separately stated federal diesel fuel excise taxes may be excluded from the sales price, however, any dealer who fails to exclude the federal diesel excise tax when collecting any sales tax may not deduct the federal diesel excise tax from his taxable sales (Source: PD 88-68 (April 26, 1988));

- Any transportation and delivery charges if the charges are separately stated on the invoice; otherwise the tax must be computed on the total charge (Source: 23 *VAC* 10-240-390);

- Any finance charges, carrying charges, service charges or interest from credit extended under conditional sale contracts or conditional contracts providing for deferred payments;

- Any bad check and late payment charges; and

- Any charges for billing and collection services.

## Cash Discounts

Any person making retail sales of fuel who allows a discount against the pump price shall compute the tax on the discounted price. If the tax is not included in the pump price, the tax shall be charged on the discounted price per unit using the brackets for collection set forth in Form FT-106, Motor Vehicle Fuel Sales Tax Bracket System, which is available for download at TAX's website at www.tax.virginia.gov. If the tax is included in the pump price, no tax calculation will be made at the time of sale. In computing tax due, the dealer shall subtract cash discounts from gross fuel sales and divide the result by 1.02 to determine the base for computing the tax. This base shall be multiplied by .02 to determine the tax due. (Source: 23 *VAC* 10-240-90)

Example 1:

Dealer makes gross monthly sales of fuel at a pump price of $20,000, and tax is included in the pump price. Dealer does not make any tax calculation at the time of the sale. Dealer has allowed $5,000 in cash discounts for the month.
Base = ($20,000-$5,000)/1.02 = $15,000/1.02 = $14,706
Tax = Base*.02 = $14,706 * .02 = $294.12

Example 2:

Dealer charges a pump price of $5, tax is not included in the pump price. The dealer allows a $1 cash discount against the pump price.
Discounted price per unit = $5-$1 = $4
Dealer would collect the tax set forth in Form FT-106, Motor Vehicle Fuel Sales Tax Bracket System, for a pump price of $4.

## Sourcing Rules

The Motor Vehicle Fuel Sales Tax for a Transportation Authority is imposed on motor vehicle fuel sold at retail in the Transportation Authority. If the delivery point of the motor vehicle fuel is in a Transportation Authority, then the retail sale is subject to the motor vehicle fuel sales tax. (Source: 23 *VAC* 10-240-410)

Example 3:

An order is placed for fuel with an office of an independent jobber or a commission distributor located outside the Hampton Roads Transportation Authority whereby the fuel is delivered within the Hampton Roads Transportation Authority. The sale is subject to the Motor Vehicle Fuel Sales Tax.

Example 4:

An order is placed for fuel with an office of an independent jobber or a commission distributor located within the Hampton Roads Transportation Authority whereby the fuel is delivered outside the Hampton Roads Transportation Authority. The sale is not subject to the Motor Vehicle Fuel Sales Tax.

## Registration of Providers

Every person making retail sales of motor vehicle fuel whereby delivery is made within a Transportation Authority is required to file an application for a Certificate of Registration with TAX for collection and payment of the sales tax. This includes every person outside this state who makes retail sales of motor vehicle fuel for delivery into a Transportation Authority. Such dealers must file returns and perform all other duties required of dealers in this state. (Source: 23 *VAC* 10-240-110 A; 23 *VAC* 10-240-290))

The Hampton Roads Transportation Authority has voted to impose the Motor Vehicle Fuel Sales Tax beginning April 1, 2008. To the extent that TAX is able to identify such dealers as potentially liable for collecting and remitting the Motor Vehicle Fuel Sales Tax, TAX will notify such dealers in advance of the effective date and supply the dealers with the necessary forms and instructions to obtain a Certificate of Registration for the motor vehicle fuels tax from TAX. If a dealer does not receive any information from TAX, and is liable to collect the Motor Vehicle Fuel Sales Tax, he should apply for a

Certificate of Registration online at TAX's website at www.tax.virginia.gov. A separate application for a Certificate of Registration is required for each place of business.

Any person who purchases motor vehicle fuel for resale and withdraws any fuel from an inventory located within a Transportation Authority for use or consumption is required to register for payment of the tax on such withdrawals. (Source: 23 *VAC* 10-240-110 A)

Any person who gives an exemption certificate for the purchase of motor vehicle fuel and makes a taxable use of any portion of the fuel taken from a storage facility located within a Transportation Authority is required to register for payment of the tax on the portion of the fuel that is used in a taxable manner. (Source: 23 *VAC* 10-240-110 A)

TAX will review and approve an application for registration and issue the dealer an official Certificate of Registration for the specific place of business noted in the application. The Certificate of Registration is not transferable and is valid only for the designated dealer and place of business. It must always be displayed conspicuously at the appropriate place of business. (Source: 23 *VAC* 10-240-110 B)

If a dealer ceases to conduct his business at the place indicated on the Certificate of Registration, the certificate immediately expires. The dealer is required to notify TAX in writing within 30 days and return the Certificate of Registration. However, if the dealer wants to relocate his place of business, he must inform TAX in writing and return the certificate so a revised certificate may be issued. Changes in ownership or corporate structure may require that the business apply for and obtain a new Certificate of Registration. (Source: 23 *VAC* 10-240-110 B)

**Filing of Monthly Returns**

Every dealer is required to file Form FT-102, Motor Vehicle Fuel Sales Tax Return, on or before the 20th day of the month following each reporting period even if no tax is due. At the time of filing Form FT-102, Motor Vehicle Fuel Sales Tax Return, the dealer must pay the amount of tax due. The return for each period becomes delinquent on the twenty-first day of the succeeding month if not paid. In the case of dealers regularly keeping books and accounts on the basis of an annual period that varies from 52 to 53 weeks, reporting consistent with such accounting period is acceptable, provided a satisfactory explanatory statement is attached to the dealer's first return filed under such annual accounting period. (Source: 23 *VAC* 10-240-370 A)

Every refiner, commission distributor, independent jobber or other person who makes sales of fuel to customers for resale shall file monthly schedule FT-102B, Schedule of Retailer Purchases for Resale, which includes the following information regarding purchases of fuel by customers who furnish a resale certificate of exemption: (1) name and address of customer furnishing a resale certificate of exemption; (2) customer's certificate of registration number issued for collection of the motor vehicle fuel sales tax as shown on the resale certificate of exemption; (3) number of gallons of fuel sold to

each customer; (4) total selling price; and (5) date of sale. The schedule is required to be filed by the 20th of the month following each reporting period. (Source: 23 *VAC* 10-240-370 B)

A dealer may apply in writing to TAX for an extension of time for filing a Form FT-102, Motor Vehicle Fuel Sales Tax Return, and paying the tax. The request must be made before the return becomes due and must state the necessity for additional time. An extension may be granted to the end of the calendar month in which the return is due, or for a period not exceeding 30 days. Penalty and interest will not be charged during the period of extension, except that interest will accrue on the tax at the rate prescribed in § 6621 of the Internal Revenue Code where the extension is granted beyond the end of the calendar month in which the return is due. Dealer's compensation will be allowed provided the return is filed and the tax paid before the expiration of the extension. Any dealer who fails to file the return within the extended time and to pay the full amount required will be treated as if no extension had been granted. (Source: 23 *VAC* 10-240-190)

Providers using commercial tax preparation software should check with their software companies for information regarding when the software company will begin supporting the Motor Vehicle Fuel Sales Tax.

**Collection of Tax**

The Motor Vehicle Fuel Sales Tax must be added to the sales price of fuel and remitted to TAX by the dealer. Thereafter, the tax is a debt from the purchaser to the dealer until paid and is recoverable at law in the same manner as other debts. The Motor Vehicle Fuel Sales Tax must be reported on each dealer’s Form FT-102, Motor Vehicle Fuel Sales Tax Return.

When any person purchases motor vehicle fuel under a certificate of exemption and withdraws motor vehicle fuel from an inventory in a Transportation Authority for a taxable use, he must pay the tax on the cost of such fuel. The cost of the fuel shall include the applicable federal and state excise tax on motor fuels before computing the two percent tax. Separately stated federal diesel fuel excise taxes may be excluded from the motor vehicle fuel sales tax. Any dealer who fails to exclude the federal diesel excise tax when collecting any sales tax may not deduct the federal diesel excise tax from his taxable sales. (Source: PD 88-68 (April 26, 1988))

In the event that a dealer collects the Motor Vehicle Fuel Sales Tax on exempt or non-taxable transactions, the dealer must remit the erroneously or illegally collected tax to TAX unless or until the dealer can affirmatively show that the tax has been refunded to the customer or credited to his account. A dealer who intentionally neglects, fails or refuses to collect the tax on a taxable retail sale of motor vehicle fuels is liable for and must pay the tax himself. Any dealer who intentionally neglects, fails or refuses to pay or collect the tax, except as allowed under the provisions of the sales tax holidays set

forth in *Va. Code* § 58.1-611.2, *Va. Code* § 58.1-609.1(18), and *Va. Code* § 58.1-611.3, is guilty of a Class 1 misdemeanor. (Source: *Va. Code* § 58.1-625)

No dealer shall hold out to the public that he will absorb all or any part of the Motor Vehicle Fuel Sales Tax, or that he will relieve any customer of the payment of all or any part of the tax except as authorized by the bracket system set forth in FT-106, Motor Vehicle Fuel Sales Tax Bracket System, which is available for download at TAX's website at www.tax.virginia.gov, or during the time periods set out in *Va. Code* § 58.1-611.2, *Va. Code* § 58.1-609.1(18), and *Va. Code* § 58.1-611.3 or during the 14 days immediately preceding such time periods for advertisements relating to sales to be made during that time period. Any dealer who does so will be guilty of a Class 2 misdemeanor. (Source: *Va. Code* § 58.1-626)

## Charge or Credit Card Sales

Any dealer making charge or credit card sales of fuel must report the total selling price and pay the applicable tax for the taxable period in which the customer takes delivery of the fuel. (Source: 23 *VAC* 10-240-170)

Example 5:

A customer takes delivery of fuel in July and presents a credit card as payment. The dealer must report and pay the tax on the July return, due August 20, even if reimbursement from the credit card company has not been received.

## Professional License Taxes

The amount of Motor Vehicle Fuel Sales Tax collected by a dealer in any taxable year shall be excluded from gross receipts for purposes of any tax imposed under Chapter 37 of Title 58.1 of the *Va. Code*. (Source: *Va. Code* § 58.1-1724.4)

## Bad Debts

Every dealer will be allowed a credit against the tax shown to be due on the return for the amount of tax previously paid on accounts that are owed to the dealer and that have been found to be worthless within the period covered by the return. The credit, however, shall not exceed the amount of the uncollected sales price determined by treating prior payments on each debt as consisting of the same proportion of sales price, sales tax and other nontaxable charges as in the total debt originally owed to the dealer. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the dealer shall be included in the first return filed after such collection. (Source: *Va. Code* § 58.1-621)

**Dealer Discount**

As compensation for accounting for and paying the Motor Vehicle Fuel Sales Tax, a dealer is allowed a discount of two percent, three percent, or four percent, depending on the volume of monthly taxable sales, of the motor vehicle fuel sales tax due in the form of a deduction, provided the amount due was not delinquent at the time of payment. Dealers must compute the discount without regard to the number of certificates of registration that they hold. Dealers holding two or more certificates of registration must compute the dealer's discount based upon taxable sales from all business locations subject to the motor vehicle fuel sales tax. This requirement applies to dealers filing consolidated returns and those filing separate returns for each business location. (Source: *Va. Code* § 58.1-622)

To compute the dealer's discount, a dealer would multiply the Motor Vehicle Fuel Sales Tax listed on his return by:

- 4.0% (or .04) if monthly taxable sales are less than $62,501; or
- 3.0% (or .03) if monthly sales are at least $62,501 but are less than $208,001; or
- 2.0% (or .020) if monthly taxable sales equal or exceed $208,001.

Example 6:

Dealer makes taxable sales of $10,000 during the month and reports Motor Vehicle Fuel Sales Tax of $200. The dealer would retain a dealer's discount of $8, provided that his return is timely filed and the motor vehicle fuel sales tax is timely paid. The $8 discount is computed by multiplying the Motor Vehicle Fuel Sales Tax ($200) by 4.0% since the dealer's monthly taxable sales volume is less than $62,501.

Example 7:

Dealer makes taxable sales of $250,000 during the month and reports motor vehicle fuel sales tax of $5,000. The dealer would retain a dealer's discount of $100, provided that his return is timely filed and the Motor Vehicle Fuel Sales Tax is timely paid. The $100 discount is computed by multiplying the Motor Vehicle Fuel Sales Tax ($5,000) by 2.0% since the dealer's monthly taxable sales volume is greater than $208,001.

Example 8:

Dealer makes taxable sales of $60,000 during the month and sells an item for $1,000. The dealer timely files a return reporting the $20 tax on the transaction, and claims the discount. The amount refunded would be $19.20 ($20 less 4.0% of the $20 motor vehicle fuel sales tax= $20 - .80 = $19.20) since the dealer’s monthly taxable sales volume is less than $62,501.

Any amount of tax refunded by TAX to a dealer will be reduced by any dealer's discount claimed on the transaction to which the refund relates.

## Penalties and Interest

Except with respect to fraudulent returns, the failure to file a timely return and make a timely and full payment of this tax will subject the dealer to a specific penalty to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed thirty percent in the aggregate. In no case, however, shall the penalty be less than ten dollars and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. (Source: *Va. Code* § 58.1-635 A)

In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of this tax, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of this tax, a specific penalty of fifty percent of the amount of the proper tax shall be assessed. (Source: *Va. Code* § 58.1-635 A)

The rate of interest on omitted taxes and assessments is the “Underpayment Rate” established pursuant to § 6621(a)(2) of the Internal Revenue Code plus two percent. (Source: *Va. Code* § 58.1-15(A))

## Sale of Business

If any dealer is liable for any tax, penalty or interest and sells his business or stock of goods or quits the business, he must make a final return and payment within 15 days after the date of selling or quitting the business. At that time, he must also return his Certificate of Registration to TAX and include a letter explaining the situation. He must report on his final return the full name and address of any successor. (Source: *Va. Code* § 58.1-629)

The dealer's successors or assigns, if any, must withhold a sufficient portion of the purchase money to cover the amount of any taxes, penalties and interest due and unpaid until the former owner produces either a receipt from TAX showing that payment has been made or a certificate stating that no taxes, penalties or interest are due. If the purchaser of a business or stock of goods fails to withhold a sufficient portion of the purchase money, he becomes personally liable for the payment of the taxes, penalties and interest due and unpaid by any former owner. (Source: *Va. Code* § 58.1-629)

A trustee, receiver, assignee, executor or administrator who continues to operate, manage or control a business engaged in making retail sales of fuel must make application for a new Certificate of Registration except for a corporation which continues to exist as the same legal entity. The tax must be collected and paid like any other

dealer. It is immaterial that such officer or person may have been appointed by a court. (Source: 23 *VAC* 10-240-440)

The personal representative of a decedent sometimes finds it necessary, in the course of his administration of an estate, to sell some or all of the tangible personal property coming into his hands as executor or administrator. A personal representative doing this, including a sheriff or sergeant who is acting as administrator is not required to register to collect the tax on such sales. (Source: 23 *VAC* 10-240-440)

## Compliance Provisions

The Retail Sales and Use Tax compliance provisions and applicable Retail Sales and Use Tax Regulations will apply to the Motor Vehicle Fuel Sales Tax.

## Records

Every dealer is required to keep and preserve for three years adequate and complete records necessary to determine the amount of tax liability. Such records shall include:
(1) a daily record of all cash and credit sales; (2) a record of the amount of all fuel purchased, including a bill of lading, invoice, purchase order or other evidence to substantiate each purchase; (3) a record of all deductions and exemptions claimed in filing tax returns, including exemption and resale certificates and bad debts; and (4) a true and complete inventory of the stock on hand and its value, taken at least once each year. (Source: *Va. Code* § 58.1-633 A)

Records must be open for inspection and examination at all reasonable hours of the business day by TAX. The dealer may maintain such records on microfilm. (Source: *Va. Code* § 58.1-633 B)

## Disposition of Revenues

The revenues from the Motor Vehicle Fuel Sales Tax will be collected and remitted monthly by dealers to TAX and, after subtracting the direct costs of administration by TAX, transferred to the Transportation Authority the revenues were collected in on a monthly basis. (Source: *Code of Va*. § 58.1-1724.6)

Any errors made in any distribution, or adjustments that are otherwise necessary, will be made in the distribution for the next month or for subsequent months. Any interest earned on the revenues will be credited to the Transportation Authority.

## Administrative Rulings

A dealer may appeal in writing to the Tax Commissioner for a ruling when there is a question about the application of the tax to a specific situation. The dealer must provide the Commissioner with all the facts: the names of individuals, firms or corporations

involved; type, location and value of property; and any other relevant information. The dealer may argue for the interpretation of the law most favorable to him. (Source: 23 *VAC* 10-240-10)

A dealer who acts on a written ruling that is later revoked or set aside by the courts or the Commissioner will have acted in good faith. A written ruling, however, becomes invalid if later changed by an amendment to the law, a court decision, or a rule or regulation issued by the Commissioner. (Source: 23 *VAC* 10-240-10)

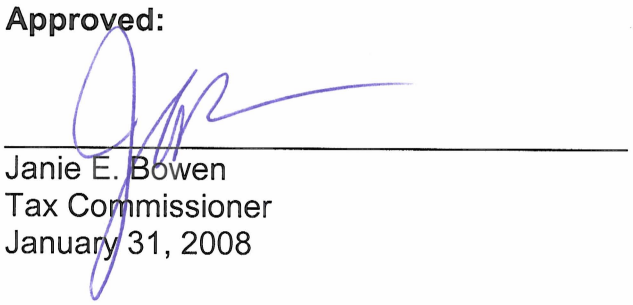
## Appeals

Taxpayers may appeal Motor Vehicle Fuel Sales Tax issues to TAX using the administrative appeals process applicable to other state taxes administered by TAX set forth in *Va. Code* § 58.1-1820 *et seq.* and the Administrative Appeal Guidelines for Tax Assessments issued by the Virginia Department of Taxation (Public Document 06-140, November 29, 2006) available on-line in the Tax Policy Library section of TAX's website, located at www.tax.virginia.gov.

## Additional Information

These guidelines and rules are available on-line in the Tax Policy Library section of TAX's website, located at www.tax.virginia.gov. For additional information, please contact the Office of Customer Services at (804) 367-8037.

**Approved:**



Janie E. Bowen
Tax Commissioner
January 31, 2008