

GUIDELINES AND RULES FOR THE MOTOR VEHICLE FUEL SALES TAX

June 22, 2010

Effective July 1, 2010, legislation enacted in the 2010 Session of the General Assembly, House Bill 1329 (*Acts of Assembly 2010, Chapter 441*), provides that transportation and delivery charges are included in the sales price for the purposes of the Motor Vehicle Fuel Sales Tax, regardless of whether the charges are separately stated on the invoice, and are taxable. This legislation also clarifies that separately stated federal diesel excise taxes are exempt from the Motor Vehicle Fuel Sales Tax. These Guidelines have been revised to conform to these legislative changes and are effective for sales of motor fuel occurring on and after July 1, 2010.

These guidelines and rules ("Guidelines") are published by the Virginia Department of Taxation ("TAX") to provide guidance to persons who sell motor vehicle fuels at retail or wholesale regarding changes to the Motor Vehicle Fuel Sales Tax imposed in the Northern Virginia Transportation District and in the Potomac and Rappahannock Transportation District effective January 1, 2010 as a result of Senate Bill 1532 (*Acts of Assembly 2009, Chapter 532*).

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 District are the Counties of Prince William and Stafford and the Cities of Fredericksburg, Manassas and Manassas Park. Effective February 15, 2010, Spotsylvania County became a member locality of the Potomac and Rappahannock Transportation District.

TAX is authorized to issue these Guidelines pursuant to *Va. Code § 58.1-1719*. These Guidelines apply to sales of fuel made on and after January 1, 2010. To the extent that there is a conflict between the existing Motor Vehicle Fuel Sales Tax Regulations (23 *Virginia Administrative Code (VAC) 10-240-10 et seq.*) and these Guidelines, these Guidelines supersede the regulations. TAX has worked with affected distributors and retailers to develop these Guidelines. As necessary, additional Guidelines will be published and posted on TAX's website, www.tax.virginia.gov.

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:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i)

Guidelines and Rules for the Motor Vehicle Fuel Sales Tax
June 22, 2010

confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Distributor" means (i) any person engaged in the business of selling fuels in the Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any fuels for sale, or any other person engaged in the business of selling fuels in the Commonwealth; (ii) any person who makes, manufactures, fabricates, processes, or stores fuels in the Commonwealth for sale in the Commonwealth; or (iii) any person engaged in the business of selling fuels outside the Commonwealth who ships or transports fuels to any person in the business of selling fuels in the Commonwealth. (Source: *Va. Code* § 58.1-1718.1)

"Fuel" means any fuel subject to the Virginia Fuels Tax (Chapter 22 of Title 58.1 of the *Va. Code*). (Source: *Va. Code* § 58.1-1718.1)

"Retail Dealer" means any person who sells fuels to a consumer or to any person for any purpose other than resale. (Source: *Va. Code* § 58.1-1718.1)

"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)

"Sales price" means the same as it does for the Retail Sales and Use Tax, except that it also includes all transportation and delivery charges, regardless of whether the charges are separately stated on the invoice. (Source: *Va. Code* § 58.1-1718.1)

"Transportation District" means the Northern Virginia Transportation District or the Potomac and Rappahannock Transportation District. (Source: *Va. Code* § 58.1-1720)

Changes to the Imposition of the Motor Vehicle Fuel Sales Tax

Prior to January 1, 2010, the Motor Vehicle Fuel Sales Tax was imposed in the Transportation Districts at the rate of 2 percent of the sales price charged by retail dealers of fuel to their customers. The tax was collected by retail dealers of fuel from their customers and remitted to TAX.

Effective January 1, 2010, the Motor Vehicle Fuel Sales Tax will be collected by distributors of fuels at the rate of 2.1 percent of the sales price charged by the distributor to any retail dealer for retail sale in a Transportation District. (Source: *Va. Code* § 58.1-1720)

Transitional Rules for the Imposition of the Motor Vehicle Fuel Sales Tax

The Motor Vehicle Fuel Sales Tax is imposed on fuels once, and only once. To minimize the potential for fuel to escape taxation or to be taxed twice in the transition of

Guidelines and Rules for the Motor Vehicle Fuel Sales Tax
June 22, 2010

the tax from a tax collected by retailers to a tax collected distributors, the following transitional rule shall be used. Retail dealers will continue to collect the Motor Vehicle Fuel Sales Tax from their customers at the rate of 2 percent of the sales price charged by them to their customers until such time as they receive their first delivery of fuel on which the distributor has collected the tax at the rate of 2.1 percent of the sales price charged by the distributor. All deliveries must be made in the normal course of business. No tax should be collected by retail dealers after January 31, 2010. All taxes collected by the retail dealer shall be remitted to TAX on or before February 20, 2010 using Form FT-102, Motor Vehicle Fuel Sales Tax Return. Every retail dealer must file Form FT-102, Motor Vehicle Fuel Sales Tax Return, on or before February 20, 2010, even if no tax is due.

TAX will review returns for the transitional period to ensure that the proper tax was collected and remitted. Retail dealers may be audited and asked to produce records showing that all deliveries were made in the normal course of business and that the Motor Vehicle Fuel Sales Tax was properly collected and remitted.

Example 1:

At 11:59 p.m. on December 31, 2009, Retailer has fuel in his inventory. Retailer will receive his next delivery of fuel from his distributor on January 5, 2010. Retailer shall continue to collect the Motor Vehicle Fuel Sales Tax from his customers at the rate of 2 percent until he receives his next delivery of fuel on January 5, 2010. Beginning with the delivery of the fuel, the Retailer will pay the Motor Vehicle Fuel Sales Tax to his distributor at the rate of 2.1 percent and cease charging the Motor Vehicle Fuel Sales Tax to his customers.

Retail dealers should remit any Motor Vehicle Fuel Sales Tax collected after January 1, 2010 using Form FT-102, Motor Vehicle Fuel Sales Tax Return, which will be due on or before February 20, 2010. Retail dealers are required to keep adequate and complete records necessary to determine the amount of tax liability for the transitional period. For more information regarding specific records that must be kept, please see the "Records" section below.

Changes to the Sales Price

Prior to July 1, 2010, separately stated transportation and delivery charges were excluded from the sales price for the purposes of the Motor Vehicle Fuel Sales Tax.

Effective July 1, 2010, transportation and delivery charges are included in the sales price for the purposes of the Motor Vehicle Fuel Sales Tax, regardless of whether the charges are separately stated on the invoice, and are taxable. Separately stated federal diesel excise taxes continue to be exempt from the Motor Vehicle Fuel Sales Tax.

Transitional Rules for the Changes to the Sales Price

Transportation and delivery charges must be included in the tax base for all sales on and after July 1, 2010. For sales prior to July 1, 2010, the Guidelines and Rules provided that separately stated transportation and delivery charges were excluded from the sales price for the purposes of the Motor Vehicle Fuel Sales Tax.

Taxable Sales

Generally, all fuels subject to the Virginia Fuels Tax, imposed in Chapter 22 of Title 58.1 of the *Va. Code*, are also subject to the Motor Vehicle Fuel Sales Tax when sold at wholesale to retail dealers for retail sale in a Transportation District. Taxable sales of fuel include, but are not limited to, the following:

- Fuel sold by a distributor to a retail dealer for retail sale. (Source: *Va. Code* § 58.1-1720)
- Fuel sold by a distributor to a consumer or to any person for any purpose other than resale. See the "Retail Sales by Distributors" section below. (Source: *Va. Code* §§ 58.1-1718.1 and 58.1-1720)
- Fuel sold by a distributor to a retail dealer for retail sale by or through post exchanges, ship stores, ship service stores, commissaries, filling 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 or purchased by the United States pursuant to required official purchase orders to be paid for out of public funds. (Source: PD 85-75 (April 4, 1985))
- Fuel sold to a retail dealer for retail sale at Ronald Reagan Washington National Airport. (Source: PD 92-206 (October 21, 1992))
- Fuel sold to persons engaged in the business of leasing or renting motor vehicles for use in such motor vehicles. (Source: *Va. Code* § 58.1-1720)

Non-Taxable Sales

As fuels subject to the new Motor Vehicle Fuel Sales Tax are limited to those fuels that are subject to the Virginia Fuel Tax, charges for the following transactions are not subject to the Motor Vehicle Fuel Sales Tax and no exemption certificate is required:

- Sales of bonded aviation jet fuel. (Source: *Va. Code* §§ 58.1-1718.1 and 58.1-2226)
- Sales of dyed diesel fuel. (Source: *Va. Code* §§ 58.1-1718.1 and 58.1-2226)

Guidelines and Rules for the Motor Vehicle Fuel Sales Tax
June 22, 2010

- Sales of heating oil. (Source: *Va. Code* §§ 58.1-1718.1 and 58.1-2226)
- Sales of fuel delivered outside the state or a Transportation District in the distributor's vehicle. (Source: 23 VAC 10-240-230)
- Sales of fuel delivered outside the state or a Transportation District by an independent trucker hired by the distributor. (Source: 23 VAC 10-240-230)
- Sales of fuel delivered by the distributor to a common carrier or a licensed contract carrier for transportation outside the state or a Transportation District and purchases for immediate transportation and resale out of this state or a Transportation District. (Source: 23 VAC 10-240-230)

Exemptions

Charges for the following transactions are not subject to the Motor Vehicle Fuel Sales Tax when sold by the distributor to the end user, however, the distributor must obtain a valid exemption certificate:

- Sales to the United States, the Commonwealth or political subdivisions of the Commonwealth for their exclusive use 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 distributor in localities subject to the Motor Vehicle Fuel Sales Tax. This exemption shall not apply with respect to fuel sold or delivered to any person operating under contract with the governmental entity. (Source: *Va. Code* § 58.1-2226)
- Sales 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. (Source: *Va. Code* § 58.1-2226)
- Sales for resale and immediate transportation out of state or a transportation district. (Source: 23 VAC 10-240-230)

Exemption Certificates

Any sale of fuel by a distributor to a retail dealer for retail sale in a Transportation District is 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 distributor unless he

Guidelines and Rules for the Motor Vehicle Fuel Sales Tax
June 22, 2010

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

Example 2:

Distributor sells fuel to the Commonwealth in a Transportation District for use in the state motor pool. Distributor receives a valid Certificate of Exemption. Distributor does not collect the Motor Vehicle Fuel Sales Tax.

Refunds

Beginning January 1, 2010, the Motor Vehicle Fuel Sales Tax will no longer be collected from the consumer by the retail dealer, but will be collected from the retail dealer by the distributor. Accordingly, the Motor Vehicle Fuel Sales Tax will no longer be refunded to consumers of retail dealers, except for sales that qualify under the "Exemptions" section above when a refund would be appropriate.

Example 3:

Distributor sells fuel to the Commonwealth in a Transportation District for use in the state motor pool. Distributor collects the Motor Vehicle Fuel Sales Tax. Subsequently the Commonwealth requests a refund. Distributor provides the Commonwealth with a refund and deducts the refund from its Motor Vehicle Fuel Sales Tax Return and payment.

Example 4:

Distributor sells fuel to a retail dealer and collects the Motor Vehicle Fuel Sales Tax. The fuel is purchased at the pump for use in a church van. The owner of the church van cannot receive a refund for the Motor Vehicle Fuel Sales Tax as the tax was paid by the retail dealer. The retail dealer cannot receive a refund for the Motor Vehicle Fuel Sales Tax as the fuel was purchased for retail sale and is subject to the tax.

Example 5:

Distributor sells fuel to a retail dealer and collects the Motor Vehicle Fuel Sales Tax. The fuel is purchased at the pump for a government car using a United States Government National credit card. The Federal Government cannot receive a refund for the Motor Vehicle Fuel Sales Tax as the tax was paid by the retail dealer. The retail dealer cannot receive a refund for the Motor Vehicle Fuel Sales Tax as the fuel was purchased for retail sale and is subject to the tax.

Sales Price and Cost Price

For purposes of the Motor Vehicle Fuel Sales Tax, sales price means the total amount charged in money or other consideration by the distributor for the sale of fuels. This includes all applicable federal and state excise taxes and storage tank fees. No deduction is allowed for the cost of the property sold, the cost of materials used, labor or service costs, losses or any items of expense. However, sales price does not include the following amounts:

- Separately stated federal diesel fuel excise taxes. Separately stated federal diesel fuel excise taxes may be excluded from the sales price, however, any distributor 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 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.
- Any charges for billing and collection services.

For purposes of the Motor Vehicle Fuel Sales Tax, cost price means the actual cost of the fuels in money or other consideration. Cost price includes all federal and state excise taxes and storage tank fees paid by the distributor and any transportation or delivery charges. Separately stated federal diesel fuel excise taxes may be excluded from the sales price and the cost price, however, any distributor 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. No deduction is allowed for the cost of the property sold, the cost of materials used, labor or service costs, losses or any items of expense. In the case of fuel sold by the distributor to an affiliated entity, the sales price shall be the greater of the sales price established by the parties or the cost price of the fuel.

If a distributor is unable to determine the cost price, the distributor may use the sales price of the fuels to compute the tax liability.

Example 6:

Distributor sells fuel only to affiliated retail dealers. The cost price of the fuel is \$2.00 per gallon, but Distributor sells the fuel for \$1.50 per gallon to the affiliated retail dealers. Distributor would collect and remit the Motor Vehicle Fuel Sales Tax from the affiliated retail dealer at the time of the sale at the rate of 2.1 percent of the cost price (\$2.00 per gallon).

Consignment Sales by Distributors

The Motor Vehicle Fuel Sales Tax is imposed at the time of the sale by the distributor to the retail dealer. Fuel delivered to a retail dealer by a distributor on consignment is not subject to the Motor Vehicle Fuel Sales Tax until the sale is complete, *i.e.* when the fuel is sold at retail.

In situations where it may be impractical to separately state the Motor Vehicle Fuel Sales Tax on invoices or other billing statements, distributors selling fuel on consignment may include the Motor Vehicle Fuel Sales Tax in the sales price on the invoice or billing statement without prior approval from the Tax Commissioner. However, such distributors must keep records available for review by TAX documenting that the distributor correctly collected the Motor Vehicle Fuel Sales Tax.

Retail Sales by Distributors

A distributor that sells fuel at retail from a pump is deemed to have made a sale of the fuel to itself for retail sale. As such, he is considered both the distributor and the retail dealer for the purposes of the Motor Vehicle Fuel Sales Tax and is subject to the tax. The distributor must report and remit the Motor Vehicle Fuel Sales Tax on such sales to TAX in the same manner as sales to other retail dealers. However, the sales price in such cases is the cost price to the distributor of the fuel. The distributor shall keep such records as necessary to show the cost price of the fuel and the Motor Vehicle Fuel Sales Tax on such fuel. Because the distributor is the retail dealer, the Motor Vehicle Fuel Sales Tax will not be refunded to his consumers, except for sales that qualify under the "Exemptions" section above when a refund would be appropriate. (Source: Va. Code § 58.1-1718.1)

In addition, a distributor that sells fuel at retail for delivery is deemed to have made a sale of the fuel to itself for retail sale. As such, he is considered both the distributor and the retail dealer for the purposes of the Motor Vehicle Fuel Sales Tax and is subject to the tax. The distributor must report and remit the Motor Vehicle Fuel Sales Tax on such sales to TAX in the same manner as sales to other retail dealers. However, the sales price in such cases is the cost price to the distributor of the fuel. The distributor shall keep such records as necessary to show the cost price of the fuel and the Motor Vehicle

Guidelines and Rules for the Motor Vehicle Fuel Sales Tax
June 22, 2010

Fuel Sales Tax on such fuel. Because the distributor is the retail dealer, the Motor Vehicle Fuel Sales Tax will not be refunded to his consumers, except for sales that qualify under the "Exemptions" section above when a refund would be appropriate. (Source: Va. Code § 58.1-1718.1)

Example 7:

Distributor sells fuel both to other retail dealers and at his own retail station. The cost price of the fuel is \$2.00 per gallon, but the Distributor sells the fuel to other retail dealers and at his own retail station for \$2.50 per gallon. Distributor would collect and remit the Motor Vehicle Fuel Sales Tax from the other retail dealers at the time of the sale at the rate of 2.1 percent of the sales price (\$2.50 per gallon). The Distributor would remit the Motor Vehicle Fuel Sales Tax on the fuel he sells at retail when the fuel is withdrawn from inventory and sold to customers at the rate of 2.1 percent of the cost price of the fuel (\$2.00 per gallon).

Example 8:

Distributor sells fuel both to other retail dealers and at retail. The cost price of the fuel is \$2.00 per gallon. Fuel is purchased from the distributor for use in a church van. The owner of the church van cannot receive a refund for the Motor Vehicle Fuel Sales Tax as the tax was paid by the distributor acting as a retail dealer and not by the owner of the church van and no exemption from the Motor Vehicle Fuel Sales Tax exists. The distributor cannot receive a refund for the Motor Vehicle Fuel Sales Tax as the fuel was purchased for retail sale and is subject to the tax.

Example 9:

Distributor sells fuel both to other retail dealers and at retail. The cost price of the fuel is \$2.00 per gallon. Fuel is purchased from the distributor and delivered to the federal government for its exclusive use. Distributor receives a valid Certificate of Exemption. Distributor does not collect the Motor Vehicle Fuel Sales Tax.

Charge or Credit Card Sales

Any distributor 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 10:

A customer takes delivery of fuel in July and presents a credit card as payment. The distributor 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.

Sourcing Rules

The Motor Vehicle Fuels Sales Tax is imposed on fuel sold to a retail dealer for retail sale in a Transportation District. If the retail sale of the fuel is in a Transportation District, then the sale of the fuel to the retail dealer is subject to the Motor Vehicle Fuel Sales Tax. (Source: *Va. Code* § 58.1-1720)

Example 11:

A retail dealer places an order for fuel in an office of a distributor located outside the Northern Virginia Transportation District whereby the fuel is then sold for retail within the Northern Virginia Transportation District. The sale is subject to the Motor Vehicle Fuel Sales Tax.

Example 12:

A retail dealer places an order for fuel in an office of a distributor located within the Potomac and Rappahannock Transportation District whereby the fuel is then sold for retail outside the Potomac and Rappahannock Transportation District. The sale is not subject to the Motor Vehicle Fuel Sales Tax.

Example 13:

A retail dealer places an order for fuel in an office of a distributor located within the Potomac and Rappahannock Transportation District whereby the fuel is then sold for retail in the Northern Virginia Transportation District. The sale is subject to the Motor Vehicle Fuel Sales Tax and allocated to the jurisdictions in the Northern Virginia Transportation District that the fuel is sold at retail sale.

Registration of Distributors

Every distributor selling fuels to retail dealers for retail sales within a Transportation District is required to file an application for a Certificate of Registration with TAX for collection and payment of the Motor Vehicle Fuel Sales Tax. This includes every person outside this state who sells fuels to a retail dealer for retail sales of the fuel for delivery into a Transportation District. Such distributors must file returns and perform all other duties required of distributors in this state. (Source: *Va. Code* § 58.1-1719; 23 VAC 10-240-110 A)

To the extent that TAX is able to identify such distributors as potentially liable for collecting and remitting the Motor Vehicle Fuel Sales Tax, TAX will notify such distributors 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 Fuel Sales Tax from TAX. If a distributor 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 gives an exemption certificate for the purchase of motor vehicle fuels and subsequently makes a taxable sale or use of any portion of the fuel in a Transportation District is required to register for the tax and remit payment of the tax on the portion of the fuel that is used in a taxable manner. (Source: *Va. Code* § 58.1-1719; 23 *VAC* 10-240-110 A)

TAX will review and approve an application for registration and issue the distributor 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 distributor and place of business. It must always be displayed conspicuously at the appropriate place of business. (Source: *Va. Code* § 58.1-1719; 23 *VAC* 10-240-110 B)

If a distributor ceases to conduct his business at the place indicated on the Certificate of Registration, the certificate immediately expires. The distributor is required to notify TAX in writing within 30 days and return the Certificate of Registration. However, if the distributor 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: *Va. Code* § 58.1-1719; 23 *VAC* 10-240-110 B.)

Filing of Monthly Returns

Every distributor registered for the Motor Vehicle Fuel Sales Tax is required to file Form DFT-1, Motor Vehicle Wholesale Fuel Sales Tax Return, on or before the 20th day of the month following each reporting period even if no tax is due. Unless specifically waived, every distributor must also include monthly schedule DFT-1A, Schedule of Motor Vehicle Wholesale Fuel Sales Tax when filing Form DFT-1, Motor Vehicle Wholesale Fuel Sales Tax Return. At the time of filing Form DFT-1, Motor Vehicle Wholesale Fuel Sales Tax Return, the distributor 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 distributors 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 distributor's first return filed under such annual accounting period. (Source: *Va. Code* § 58.1-1720.)

A distributor may apply in writing to TAX for an extension of time for filing a Form DFT-1 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 distributor 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.)

Persons making sales of fuel to customers for resale will no longer be required to file monthly schedule FT-102B, Schedule of Retailer Purchases for Resale, effective for the period beginning January 1, 2010. Every refiner, commission distributor, independent jobber or other person who makes sales of fuel to customers for resale who is required to file the monthly schedule FT-102B, Schedule of Retailer Purchases for Resale, shall file the schedule due January 20, 2010, for the period beginning December 1, 2009.

Collection of Tax

The Motor Vehicle Fuel Sales Tax must be added to the sales price or the cost price of the fuel and remitted to TAX by the distributor. The tax becomes a debt from the retail dealer to the distributor until paid. The Motor Vehicle Fuel Sales Tax must be reported on each distributor's Form DFT-1, Motor Vehicle Wholesale Fuel Sales Tax Return.

When any person purchases fuel under a certificate of exemption and withdraws fuel for a taxable sale or use in a Transportation District, he must pay the Motor Vehicle Fuel Sales Tax on the cost of such fuel. The cost of the fuel shall include the applicable federal and state excise tax on motor fuels and storage tank fees before computing the 2.1 percent Motor Vehicle Fuel Sales Tax.

In the event that a distributor collects the Motor Vehicle Fuel Sales Tax on exempt or non-taxable transactions, the distributor must remit the erroneously or illegally collected tax to TAX unless or until the distributor can affirmatively show that the tax has been refunded to the customer or credited to his account. A distributor who intentionally neglects, fails or refuses to collect the Motor Vehicle Fuel Sales Tax is liable for and must pay the tax himself. No distributor 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.

Professional License Taxes

The amount of Motor Vehicle Fuel Sales Tax collected by a distributor 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* § 58.1-1722)

Bad Debts

Every distributor 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 distributor 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 distributor. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the distributor 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 distributor is allowed a discount of two percent 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. Distributors 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* § 58.1-1720)

Example 14:

Distributor reports Motor Vehicle Fuel Sales Tax of \$5,000. The dealer is entitled to 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%.

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

Example 15:

Distributor sells fuel to a Retail Dealer for \$1,000. The distributor timely files a return reporting the \$21 tax on the transaction, and claims the discount. Subsequently, the distributor provides a refund to the Retail Dealer and requests a refund from TAX for the amount of tax paid. The amount refunded would be \$20.58 (\$21 less 2.0% of the \$21 Motor Vehicle Fuel Sales Tax = $\$21 - .42 = \20.58).

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 distributor 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 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 distributor 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 distributor'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 distributor. It is immaterial that such officer or person may have been appointed by a court.

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 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 distributor may maintain such records on microfilm or in an electronic format. (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 distributors to TAX and, after subtracting the direct costs of administration by TAX, transferred to the Transportation District in which the revenues were collected in on a monthly basis. (Source: *Va. Code* § 58.1-1724)

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 District.

Administrative Rulings

A distributor 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 distributor must provide the Commissioner with all pertinent facts, including the names of individuals, firms or corporations involved; type, location and value of property; and any other relevant information. The distributor may argue for the interpretation of the law most favorable to him. (Source: 23 VAC 10-240-10)

A distributor 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 23 VAC 10-20-165.

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:

Linda D. Foster
Deputy Tax Commissioner