



AGENDA ITEM #8

**TO:** Chairman Hudgins and NVTC Commissioners  
**FROM:** Rick Taube and Scott Kalkwarf  
**DATE:** August 26, 2010  
**SUBJECT:** NVTC Motor Fuels Tax Issues

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NVTC and jurisdiction staffs have discussed continuing concerns about the accuracy of allocations among jurisdictions of the new 2.1% motor fuels tax on distributors. In reviewing the monthly reports since the new tax was levied (January, 2010 with NVTC's initial receipts in March, 2010), there are strong indications that taxpayers are not correctly specifying the jurisdictions in which the fuel is sold.

NVTC depends on the accuracy of these allocations because it distributes the proceeds each year on a point-of-sale basis, using shares determined by actual collections from the previous year. This method is included in NVTC's approved allocation resolution in order to allow jurisdictions more accurately to budget at the beginning of each year. For FY 2011, the allocation factors for FY 2010 will be used but are believed currently to be inaccurate. For example, the city of Fairfax has a significantly larger share (up 50%) as does Falls Church (up 60%).

The tax is collected and audited by the Virginia Department of Taxation (TAX) with NVTC paying the administrative expenses. TAX auditors typically review transactions that occurred several months in the past and have not yet addressed NVTC's concerns with jurisdictional allocations following January 1, 2010. Repeated efforts to elicit cooperation from TAX officials to work with NVTC staff to identify the extent of the problem and resolve it were not successful. Both NVTC and PRTC wrote to Acting Tax Commissioner Burns and his replies are attached.

On August 23<sup>rd</sup>, NVTC, PRTC and local staff attended a meeting in Richmond with TAX officials to reiterate the above concerns and try to agree on a cooperative approach to solve the problem. A copy of the agenda is attached. Acting Commissioner Burns and several senior TAX officials attended. They heard the concerns and agreed to cooperate to address them. A follow-up session is being scheduled to examine materials developed by commission staffs that document the problem. Presumably an action plan will follow.



In the meantime, NVTC and jurisdiction staff have agreed to use the following approach for allocating motor fuels tax revenues in FY 2011. The FY 2010 shares will be used as directed in NVTC's allocation resolution, but the suspected amounts that may be erroneously allocated will be identified and jurisdictions will have the option of not spending those amounts. When and if errors are documented, these reserved revenues can be reallocated without hardship to any jurisdiction.



**Chairman**  
Hon. Catherine M. Hudgins

**Vice Chairman**  
Hon. William D. Euille

**Secretary/Treasurer**  
Hon. Mary Hynes

**Commissioners:**  
**City of Alexandria**  
Hon. William D. Euille  
Hon. Paul Smedberg

**Arlington County**  
Hon. Mary Hynes  
Hon. Jay Fisette  
Hon. Christopher Zimmerman

**Fairfax County**  
Hon. Sharon Bulova  
Hon. John Cook  
Hon. John Foust  
Hon. Catherine M. Hudgins  
Hon. Jeffrey McKay

**City of Fairfax**  
Hon. Jeffrey C. Greenfield

**City of Falls Church**  
Hon. Daniel Maller

**Loudoun County**  
Hon. Kelly Burk

**Virginia Department of Rail  
and Public Transportation**  
Hon. Thelma Drake

**Virginia General Assembly**  
Sen. Mark R. Herring  
Sen. Mary Margaret Whipple  
Del. David B. Albo  
Del. Adam P. Ebbin  
Del. Joe T. May  
Del. Thomas D. Rust

**Executive Director**  
Richard K. Taube

July 1, 2010

Craig M. Burns  
Acting Tax Commissioner  
Virginia Department of Taxation  
1111 East Broad Street, 3<sup>rd</sup> Floor  
Richmond, VA 23219

Dear Mr. Burns:

The Northern Virginia Transportation Commission is writing to alert you to an ongoing serious concern regarding the collection of the 2.1% tax on distributors of motor fuels that is collected by your department for our commission and the Potomac and Rappahannock Transportation Commission.

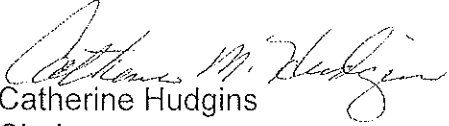
Since the new tax method went into effect on January 1, 2010, our staff has tracked the allocations of tax revenue by jurisdiction. We have identified patterns that strongly suggest some revenues are being allocated to incorrect jurisdictions. We suspect this is due to taxpayers reporting the wrong jurisdiction of sales locations on their returns, perhaps due to confusion with such similar names as Alexandria, Falls Church and Fairfax (the cities versus the areas of Fairfax County).

Auditors and managers from your department have been unable to assist in resolving our concerns. We face an August deadline to correct any past errors and ensure that systemic problems are cured, because in that month our jurisdictions will receive allocation factors for our motor fuels tax revenues that they use to set their budgets.

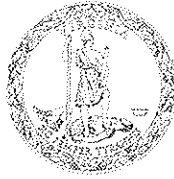
Our staff has previously suggested several possible ways to identify errors and permanently resolve situations that would lead to those errors continuing. We are writing to urge you to direct your staff to cooperate with us now to tackle this issue and fix it. Specifically, when can our staff meet with yours to initiate long overdue action?

Please feel free to contact me with any questions.

Sincerely,

  
Catherine Hudgins  
Chairman

cc: Senator Richard Saslaw  
Al Harf



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# COMMONWEALTH of VIRGINIA

*Department of Taxation*

July 13, 2010

The Honorable Catherine M. Hudgins  
Chairman, Northern Virginia Transportation Commission  
4350 N. Fairfax Drive, Suite 720  
Arlington, Virginia 22203

Re: Motor Vehicle Fuel Sales Tax

Dear Ms. Hudgins:

Thank you for your letter regarding the Motor Vehicle Fuel Sales Tax on behalf of the Northern Virginia Transportation Commission. You expressed concern that the distributors are not allocating their sales because of recent statutory changes to the correct locality.

As you noted in your letter, the responsibility for collection and payment of the Motor Vehicle Fuel Sales Tax shifted from motor vehicle fuel retailers to motor vehicle fuel distributors beginning January 1, 2010. In response to the legislative change, TAX redesigned forms, notified potential taxpayers, and issued guidance regarding the new Motor Vehicle Fuel Sales Tax. When redesigning the forms for the new tax, TAX continued to include a schedule for allocating the fuel sales by locality with the return. The instructions for allocating the tax are very clear and can be found in the return instructions that are also provided. The first return under the new tax structure was due February 20, 2010.

However, as you are aware, most of the current taxpayers had not collected or filed a return for the Motor Vehicle Fuel Sales Tax prior to February 20, 2010. During the first months, TAX's staff noticed that several distributors had not provided a schedule with the return. In anticipation of this eventuality, TAX's systems were designed not to process a return without the schedule. When a return is filed without a schedule, TAX contacts the taxpayer, usually by phone, explains that a schedule is required, answers any questions that the taxpayer has, and then ensures that the schedule has been sent in to TAX. In March, TAX also revised the Motor Vehicle Fuel Sales Tax Return for the May returns to make the language that a schedule must be included with the return more noticeable.



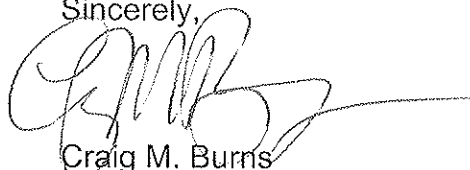
Virginia Internet Filing and Payment for Businesses and Individuals  
[www.tax.virginia.gov](http://www.tax.virginia.gov)

The Honorable Catherine M. Hudgins  
July 13, 2010  
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I believe that TAX has been proactive and systematic in implementing the statutory changes as well as ensuring that distributors provide a schedule and allocate their sales to the correct locality. However, this is a new tax, and some distributors may be confused regarding the correct local jurisdictions. Knowing this cannot be determined without individual audits on taxpayers, TAX is in the process of developing an audit plan for this new tax. TAX typically schedules audits to begin after there has been a full year of returns to ensure that all of the significant issues have been surfaced regarding the tax and that our auditors are sufficiently trained in how to handle these issues. This usually results in a smoother audit process and less of an administrative burden for both TAX and the taxpayer.

You also mentioned that your staff has previously suggested several ways to resolve any possible problems with the allocation of the tax. TAX will always welcome any suggestions you or your staff may have on this and other issues. However, I must note that we may not always be able to quickly act on your suggestions. Before TAX can act, we must first be certain that our actions would not jeopardize confidential tax information or place an unreasonable burden on taxpayers.

I understand that you have an August deadline in determining allocation factors for the localities in your transportation district. While my staff is available to meet with your staff and the staff of the Potomac and Rappahannock Transportation Commission in the coming weeks regarding our audit plans, TAX cannot begin auditing distributors in such a short time frame and produce meaningful results. I will have my staff contact you shortly regarding a meeting with your staff on this issue and any other concerns you may have. If you have any further questions or concerns, please contact Mark Haskins, my Policy Development Director at (804) 371-2296.

Sincerely,  
  
Craig M. Burns  
Acting Tax Commissioner

CMB/amm

C: The Honorable Richard Saslaw  
Alfred Harf



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AUG 17 2010

COMMONWEALTH of VIRGINIA  
*Department of Taxation*

August 11, 2010

The Honorable Michael C. May  
Chairman, Potomac and Rappahannock Transportation Commission  
14700 Potomac Mills Road  
Woodbridge, Virginia 22192

Re: Motor Vehicle Fuel Sales Tax

Dear Mr. May:

Thank you for your letter regarding the Motor Vehicle Fuel Sales Tax on behalf of the Potomac and Rappahannock Transportation Commission. You expressed concern that the distributors are not allocating their sales because of recent statutory changes to the correct locality.

As you are aware, the responsibility for collection and payment of the Motor Vehicle Fuel Sales Tax shifted from motor vehicle fuel retailers to motor vehicle fuel distributors beginning January 1, 2010. In response to the legislative change, TAX redesigned forms, notified potential taxpayers, and issued guidance regarding the new Motor Vehicle Fuel Sales Tax. When redesigning the forms for the new tax, TAX continued to include a schedule for allocating the fuel sales by locality with the return. The instructions for allocating the tax are very clear and can be found in the return instructions that are also provided. The first return under the new tax structure was due February 20, 2010.

However, most of the current taxpayers had not collected or filed a return for the Motor Vehicle Fuel Sales Tax prior to February 20, 2010. During the first months, TAX's staff noticed that several distributors had not provided a schedule with the return. In anticipation of this eventuality, TAX's systems were designed not to process a return without the schedule. When a return is filed without a schedule, TAX contacts the taxpayer, usually by phone, explains that a schedule is required, answers any questions that the taxpayer has, and then ensures that the schedule has been sent in to TAX. In March, TAX also revised the Motor Vehicle Fuel Sales Tax Return for the May returns to make the language that a schedule must be included with the return more noticeable.



The Honorable Michael C. May  
August 11, 2010  
Page 2

I believe that TAX has been proactive and systematic in implementing the statutory changes as well as ensuring that distributors provide a schedule and allocate their sales to the correct locality. However, this is a new tax, and some distributors may be confused regarding the correct local jurisdictions. Knowing this cannot be determined without individual audits on taxpayers, TAX is in the process of developing an audit plan for this new tax. TAX typically schedules audits to begin after there has been a full year of returns to ensure that all of the significant issues have been surfaced regarding the tax and that our auditors are sufficiently trained in how to handle these issues. This usually results in a smoother audit process and less of an administrative burden for both TAX and the taxpayer.

You suggested that TAX audit distributors in order to resolve problems with the allocation of the tax. TAX will always welcome any suggestions you or your staff may have on this and other issues. However, I must note that we may not always be able to quickly act on your suggestions. Before TAX can act, we must first be certain that our actions would not jeopardize confidential tax information or place an unreasonable burden on taxpayers.

While my staff is available to meet with your staff and the staff of the Northern Virginia Transportation Commission in the coming weeks regarding our audit plans, TAX cannot begin auditing distributors in such a short time frame and produce meaningful results. I will have my staff contact you shortly regarding a meeting with your staff on this issue and any other concerns you may have. If you have any further questions or concerns, please contact Mark Haskins, my Policy Development Director at (804) 371-2296.

Sincerely,



Craig M. Burns  
Acting Tax Commissioner

CMB/jem

C: The Honorable Richard Saslaw  
Richard K. Taube, NVTC

## AGENDA FOR MOTOR FUELS MEETING

1. MVFST Field Agents
  - i. Reason for transfer from Collections division to Audit division.
  - ii. Job description / functions of the Field Agents under Audit verses Collections.
  - iii. Will Field Agents continue to investigate allocation issues – differences for the pre- and post 1/1/10 periods?
  - iv. Are the field agents still the commissions' point of contact
2. Payment obligation issues
  - i. What confidence does Taxation have that all those who should be paying are paying
  - ii. What checks could Taxation be doing sooner than the customary "year after" to raise this level of confidence?
3. Allocation issues
  - i. Importance to NVTC/PRTC of correct allocation
  - ii. Correction of past activity – who, when, how?
  - iii. Use of audit approach and "casual" inquiries.
  - iv. Use of NVTC / PRTC analysis of potential allocation issues.
  - v. What can be done to minimize allocation issues in future?
4. Concerns regarding the implementation of the tax in Spotsylvania County effective 2/15/10.