



# COMMONWEALTH of VIRGINIA

## *Department of Taxation*

April 20, 2009

Mr. Richard K. Taube, Executive Director  
Northern Virginia Transportation Commission  
4350 N. Fairfax Drive, Suite 720  
Arlington, Virginia 22203

Dear Mr. Taube:

This is in response to your letter dated March 31, 2009, regarding our meeting on March 30, 2009.

In general, your letter accurately reflects my understanding of the discussion, but I would like to clarify three points. As mentioned in the meeting, both TAX and the Attorney General's Office review any tax legislation proposed in the General Assembly. Both agencies had the opportunity to propose amendments to the legislation to the Governor, and neither did so. However, TAX cannot make any assurances on behalf of another agency. Also, while TAX will make every reasonable effort to ensure compliance with both the current Motor Vehicle Fuel Sales Tax and the changes to the tax imposed by Senate Bill 1532, TAX cannot guarantee that all taxpayers will comply with the law. Finally, as was stated in the meeting, both fleet owners and military exchanges would meet the definition of "person" provided in Senate Bill 1532. However, without further research and more facts, TAX is not prepared to rule that any specific entity would be considered a "retail dealer" and required to pay the Motor Vehicle Fuel Sales Tax.

You asked TAX to provide empirical confirmation that the estimated retail price markup used in the revenue estimate for Senate Bill 1532 is realistic by asking retailers to provide their price markup on the tax returns. As was stated in the meeting, the revenue impact of the changes to the Motor Vehicle Fuel Sales Tax imposed by Senate Bill 1532 depends on the price markup from the distributor's sales price to the retailer's sales price, which varies with many factors and from business to business. In providing a revenue estimate, TAX used an average price markup of 4%, which was taken from a University of Wisconsin study. TAX agreed to consider your request.

Upon further reflection after the meeting, TAX is concerned that collecting any data beyond what is necessary to administer the tax would entail TAX deviating from its



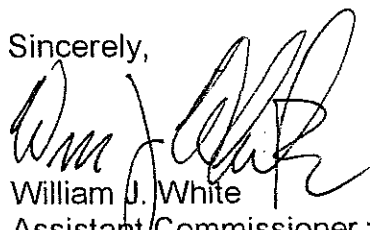
Mr. Richard Taube  
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longstanding policy of only collecting information on tax returns that is necessary to ascertain a taxpayer's tax liability. Furthermore, as the price markup that a retail business chooses is so tied to its profit margin, even asking for this information could prove to be very controversial. This would especially be true when Senate Bill 1532 goes into effect and distributors selling motor fuel to retail businesses start filing the tax returns. In order for TAX to collect this information after January 1, 2010, a retail business would have to provide its price markup to its distributor.

TAX will work closely with the transportation commissions and with industry as it promulgates Guidelines for the new tax this summer. I look forward to working with you to ensure that the new tax is a success.

If you have any further questions or concerns, please contact Mark Haskins, Director of Policy Development at (804) 371-2296.

Sincerely,



William J. White  
Assistant Commissioner for Tax Policy

JEB/amm

c: Janie E. Bowen, Tax Commissioner  
Alfred Harf  
Mark C. Haskins



# NVTC

Northern Virginia Transportation Commission

March 31, 2009

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**Executive Director**

Richard K. Taubé

William J. White  
Assistant Commissioner for Tax Policy  
Virginia Department of Taxation  
P.O. Box 2475  
Richmond, VA 23218

Dear Mr. White:

On behalf of Al Harf of PRTC, Scott Kalkwarf of NVTC and myself, I wish to thank you for hosting our productive discussion yesterday with you and your colleagues Mark Haskins, Joe Mayer and Andrea Muse, regarding SB 1532.

I will take this opportunity to summarize our understanding of the discussion and ask that you acknowledge receipt, correct any misinterpretations and add any pertinent details I may have missed.

My letter and Al Harf's letter both dated March 18, 2009, to Commissioner Bowen, set forth several questions and concerns relating to SB 1532. You and your staff assured us that the Department of Taxation, as well as the Attorney General's Office, have carefully reviewed that bill and found no reason to propose to the Governor any amendments.

Specifically, you assured us that you are empowered to ensure that no motor fuel will escape taxation due to purchases by retailers prior to the effective date of the legislation of January 1, 2010 for sale after that date. You cited similar circumstances in cigarette taxation and others in which your department successfully collected taxes on inventories so that none escaped taxation during a transition (nor was a tax payer required to pay more tax than was due).

You also assured us that the definitions within SB 1532 are sufficient to ensure that all entities are covered, including fleet owners and military exchanges.

You stated that you are confident that data from distributors will be accurately collected to attribute sales to specific NVTC and PRTC jurisdictions.

You described your ongoing process of developing forms, audit plans and policies for the new tax. You estimated by late summer or early fall, 2009, you would have solidified these plans. You cited your previous experiences in developing plans for collection of regional taxes provided by HB 3202. You intend to involve NVTC and PRTC as well as taxpayers and other affected entities. You anticipate no problems in effectively auditing large and/or out of state tax payers.

Regarding the current 2% retail motor fuels tax, you remain convinced that compliance is excellent due to significant audit resources being applied and that comparison of existing forms submitted by distributors to forms from retailers provides an effective means to ensure sufficient taxes are being paid. You stated further that your department investigates every instance in which an allegation is made about insufficient retail taxes being paid.

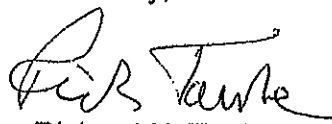
I pointed out to you my concerns with your department's estimates of the fiscal impact of SB 1532. It is my view that the assumption of a 4% retail markup is not supported by sufficient empirical data to provide any certainty that the fiscal estimate is realistic. Without determining empirically the retail markup, there can be no way of knowing whether the 2.1% tax rate on distributors is sufficient to provide revenues at least as great as the current 2% tax on retailers. Accordingly, I asked you to consider cooperating in addressing this concern, perhaps by a minor adjustment to your current forms for distributors and/or retailers, to enable tracking of the price paid by retailers versus the price paid by their customers. Preferably this would be accomplished prior to January 1, 2010 while retailers are still required to submit forms. The reason for this request is to permit an informed judgment about the consequences of SB 1532 and whether the tax rate may need to be adjusted in the future to ensure tax revenue neutrality at a minimum.

You agreed to consider my request and to inform us later as to whether your department would cooperate.

Finally, we discussed NVTC's long-standing request for an agreement identical to that of PRTC providing consultation with the commission when a taxpayer settlement is proposed over \$25,000. You asked for documentation of our earlier requests and acknowledged the request in my letter of March 18, 2009. With this information in hand you agreed to take care of NVTC's request.

I trust this accurately summarizes the results of our meeting. Please feel free to correct any misstatements and add any details you believe should be included.

Sincerely,



Richard K. Taube  
Executive Director

cc: Al Harf

# NVTC

Northern Virginia Transportation Commission

# NVTC

March 18, 2009

Ms. Janie E. Bowen  
Commissioner  
Virginia Department of Taxation  
P.O. Box 1115  
3600 W. Broad Street  
Richmond, VA 23218-1115

Dear Commissioner Bowen:

As you know, SB 1532 has been passed by the 2009 Virginia General Assembly. That bill changes the method of collecting the motor fuels sales tax for the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, effective January 1, 2010. The new method will assess a 2.1% rate on sales by distributors (the old rate was 2.0% assessed on retail sales).

Below I have listed several questions and concerns about provisions of SB 1532, some of which may require amendments. Because the veto session is scheduled for April 8, 2009, I am requesting a meeting in the next two weeks with you and/or officials you designate to consider the following matters and determine whether any legislative changes are needed as well as to ensure a smooth transition to the new method. Several jurisdiction staff members wish to participate as well.

Since the start of FY 1981, the Virginia Department of Taxation has collected the 2% retail tax for NVTC (and later for PRTC) and remitted the proceeds to the two commissions, while withholding an administrative fee which includes the cost of auditors employed by your department.

For the most part I believe the commissions have enjoyed a very productive relationship with the Department of Taxation as we worked together to collect and hold in trust taxes destined for vital transportation projects in Northern Virginia. I trust that we will continue this effective working relationship as we transition to a new method.



These are the issues of concern to us and we would also like to learn of your concerns and whether you are seeking any amendments to HB 1532:

1. The distributors must be required to report sales by jurisdiction to allow the commissions to credit their jurisdictions accurately for sales within each jurisdiction. Other changes will be required to the current form used by distributors. We understand such changes can be accomplished administratively and would like to have confirmation from your department.
2. An audit plan must be developed that ensures compliance by retailers for the remainder of the year and for distributors beginning January 1, 2010. Representatives of the Department of Taxation testified to the General Assembly as it considered SB 1532 to the effect that the department ensures each retail station owner is paying the current 2% tax but cannot ensure that the station owners are paying the correct amount. This statement came as a complete surprise to me in light of previous assurances from the department about the extent of auditing. This shortcoming must be corrected immediately for the current tax and prevented from occurring for the new tax. We should share ideas about how these improvements can be accomplished. For example, will auditing large out-of-state distributors pose any particularly difficult challenges?
3. NVTC board members are concerned that tax revenue may be lost in the transition to the new approach as retailers fill their storage tanks just before January 1 while distributors don't begin paying the new tax until January 1. Our preliminary research indicates that little excess retail storage capacity exists, but every day the tax is not collected costs NVTC and PRTC almost \$165,000. We would like your help in measuring the likely extent of this unintended consequence and crafting a solution, if necessary. For example, retailers could be compelled to continue to pay the 2% tax on retail sales for all fuel in their possession prior to January 1. If this requires an amendment to the legislation, we would have to make the request well before the veto session on April 8, 2009.
4. A related concern is to be certain that retailers are not permitted to pay distributors for fuel prior to January 1, 2010 for delivery over extended periods after that time in order to avoid the new tax. SB 1532 imposes the tax at the time of the sale. An amendment may be necessary to clarify that such sales prior to January 1, 2010 for delivery after that date will still be taxed, including such sales that may have already occurred.

5. SB 1532 specifies that sales to retailers "located in" the NVTC and PRTC districts are to be taxed. If a corporate entity owning the station is not located therein, they may try to avoid the tax. The current statutory language eliminated by SB 1532 referred to taxing fuel "sold within" those districts and therefore was not subject to that concern.
6. The definition of "person" as applied to retail dealers does not explicitly mention military exchanges and fleet owners, unless such businesses could be construed to be covered by the term "other legal entity." Of concern is whether distributors would be required under SB 1532 to pay the tax on sales to those military exchanges and fleet owners.
7. We would like to learn of your schedule to redesign tax forms and to reach out to distributors prior to the January 1, 2010 implementation date of the new tax. We are ready to be helpful to you in these activities at your request. In the past we have prepared brochures and distributed them to taxpayers (following your review).
8. NVTC has tried for several months to obtain from your department an agreement identical to that previously provided to PRTC that requires consultation prior to your department accepting a settlement of delinquent tax revenues. I would like to obtain such an agreement prior to the veto session.
9. The assumption in the fiscal impact statement that accompanied SB 1532 was that the average retail markup of motor fuel prices by retailers over the price they pay distributors is 4%. This assumption produced the conclusion (without considering effects on compliance) that tax yields would be higher with the new 2.1% tax on distributors than the existing 2.0% tax on retailers. NVTC's board members would like to have empirical confirmation that this assumption is realistic (since with a higher retail markup the new tax yields from distributors would be less than the current yields from retailers). We would like to cooperate with you in addressing this request for information.

I will be in contact with you soon to arrange a time convenient to you to discuss these items and others you may wish to raise. In the meantime, please feel free to contact me with any questions.

Sincerely,



Richard K. Taube  
Executive Director