You inquire regarding the Virginia Fuels Tax Act, which has been reenacted as Chapter 22 of Title 58, §§ 58.1-2200 through 58.1-2290 of the Code of Virginia (the "2001 Act"). You believe the effect of the 2001 Act is to move the point of taxation by the Commonwealth on motor fuels from the distributors and dealers to the supplier, at the point of distribution at the terminal rack.

You advise that motor fuel is delivered and sold to consumers under different marketing plans. Gasoline retailers whose motor fuel is delivered directly to them by an oil company or refiner are entitled to obtain a license from the Department of Motor Vehicles (the "Department"), remit the tax payment to the company or refiner, and take the one percent deduction provided under the 2001 Act. You advise also that a petroleum jobber who receives motor fuel from the terminal rack and delivers it to motor fuel retail sites owned and operated by gasoline retailers remits the tax to the supplier, and the jobber may take the one percent deduction.

You relate that some gasoline retailers who own and operate stations have agreements with petroleum jobbers who obtain motor fuel from the terminal rack and deliver the fuel to the gasoline retailer upon leaving the terminal. Consequently, you advise that, if the gasoline retailer is not licensed by the Department as a distributor, the jobber delivering the motor fuel to the retailer remits the applicable tax to the supplier (a
refiner), and the jobber (a licensed distributor) receives the one percent deduction.

You advise that the one percent allowance is provided to licensed distributors to offset costs associated with dead storage in underground storage tanks and shrinkage due to temperature-related evaporation. You relate that, although a jobber, acting as a licensed distributor and not as a transporter of fuel, delivers motor fuel to a gasoline retailer directly from the terminal facility, the retailer has the dead storage and absorbs the cost of shrinkage. You also advise that the retailer pays for gross gallons delivered by the jobber but actually sells net gallons, lower than the gross amount, due to temperature-related evaporation.

You first ask whether a gasoline retailer who receives motor fuel from a jobber transporting fuel from a supplier may obtain a license from the Department as a distributor.

The reading of a statute as a whole influences the proper construction of ambiguous individual provisions. Section 58.1-2201 defines the following terms used in the 2001 Act:

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

* * *

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

* * *

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

The 2001 Act does not define the term "jobber." I am, however, advised that the term "jobber" has been used for many years in the industry to mean either a distributor or a transporter of fuel.

Section 58.1-2204 lists persons required to obtain a license from the Commissioner of the Department before performing any activity associated with the licensure requirement. The list of required persons who must obtain a license from the Department does not include
distributors. Section 58.1-2206, however, provides that "[a] person who conducts the activities of a distributor or a permissive supplier may obtain a license issued by the Commissioner for that activity." Section 58.1-2208(B) contains the procedures for obtaining a license under the 2001 Act:

An applicant for a license as a … distributor … shall satisfy the following requirements:

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

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

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

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

Finally, § 58.1-2211(A) requires that "[a]n applicant for a license as a … distributor … shall file with the Commissioner a bond, certificate of deposit, or irrevocable letter of credit" which "shall be conditioned upon compliance with the requirements of [the 2001 Act], be payable to the Commonwealth, and be in the form required by the Commissioner."

"The plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow or strained construction." Accordingly, it is my opinion that a gasoline retailer who meets the definition of "distributor" in § 58.1-2201 and complies with the licensure requirements in §§ 58.1-2206, 58.1-2208 and 58.1-2211 may be licensed as a distributor under the 2001 Act.

You next ask whether the gasoline retailer who holds a license from the Department as a distributor is entitled to the one percent collection allowance when he remits the tax payment directly to the supplier of motor fuel.

Section 58.1-2219 provides:
A. The tax imposed pursuant to § 58.1-2217 at the point that motor fuel is removed by a system transfer from a terminal in Virginia shall be paid by the position holder of the fuel; however, if the position holder is not the terminal operator, the terminal operator and position holder shall be jointly and severally liable for the tax.

B. The tax imposed pursuant to § 58.1-2217 at the point that motor fuel is removed at a terminal rack in Virginia shall be payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is first received by an unlicensed distributor, the supplier of the fuel shall be liable for payment of the tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, then (i) the terminal operator and (ii) the person selling the fuel shall be jointly and severally liable for payment of the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel shall be jointly and severally liable for payment of the tax due on the fuel.

Section 58.1-2201 defines "position holder" as

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

Under § 58.1-2219(B), the motor fuel tax is imposed "at the point that the motor fuel is removed at a terminal rack in Virginia," and it is "payable by the person that first receives the fuel upon its removal from the terminal." Section 58.1-2201 defines "removal" as "a physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or other means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance."

Under the provisions of § 58.1-2219(B), therefore, fuel is removed from the terminal upon the loading of the fuel into a transport truck. If the person receiving the fuel is a licensed distributor, then the distributor is responsible for paying the motor fuel tax at the point the fuel is removed from the terminal rack into the truck. Consequently, § 58.1-2219(B) would require a jobber who is a licensed distributor to remit the tax to the
supplier. If the jobber is not a licensed distributor, however, the supplier is liable under § 58.1-2219(B) for the tax on the fuel. The scheme set forth in the 2001 Act, therefore, maintains the point of taxation at the terminal rack. "The manifest intention of the legislature, clearly disclosed by its language, must be applied."\(^{10}\)

When the jobber or some other independent truck company simply picks up fuel for the gasoline retailer, and the gasoline retailer pays the supplier for the fuel, it is my opinion that the gasoline retailer is responsible for the tax under § 58.1-2219(A). In such an instance, the jobber or independent truck company is a "motor fuel transporter,"\(^{11}\) as that term is defined in § 58.1-2201, who has no duty to remit taxes or file a monthly return under § 58.1-2230, but rather, may only be required to file an informational return under § 58.1-2241. Should the jobber pay the supplier for the fuel placed in his transport, the jobber is the first person who "receives the fuel upon its removal from the terminal" pursuant to § 58.1-2219(B) and is entitled to take the one percent collection allowance. Should the gasoline retailer pay the supplier for the fuel, however, then such retailer is the first person who "receives the fuel upon its removal from the terminal" pursuant to § 58.1-2219(B), and the jobber is simply hauling the fuel for the retailer. When the gasoline retailer pays the supplier for the fuel, including the § 58.1-2219(B) tax on the fuel, he is entitled to the one percent collection allowance when he remits the tax payment to the supplier.

You third inquiry concerns a situation in which a gasoline retailer whose motor fuel is delivered to the retail site by a jobber is not licensed as a distributor and is not eligible for the one percent deduction on the payment of motor fuel taxes. You ask whether, in such a situation, the 2001 Act constitutes special interest legislation in that it discriminates against and treats classes of the same trade differently.

The Supreme Court of Virginia has defined "special laws" prohibited by Article IV, § 14 of the Constitution of Virginia (1971) as those which, by force of an inherent limitation, arbitrarily separate persons, places or things of the same general class.\(^{12}\) "[A] general law … applies to all who are similarly situated."\(^{13}\) A law may apply only to a small class of persons, or even a single locality, without being prohibited by Article IV, § 14, if it applies to all parts of the Commonwealth where similar conditions exist.\(^{14}\)

Review of any statute for possible violation of the constitutional prohibition on special legislation must begin with the presumption of constitutionality that attaches to all acts of the General Assembly.\(^{15}\) The Virginia Supreme Court has often stated, """If any state of facts can be reasonably conceived, that would sustain [a classification], that state of facts at the time the law was enacted must be assumed.""\(^{16}\) The distinction
between general laws that are permitted and special laws that are not must be determined on a case-by-case basis. The Supreme Court has also noted that "courts uphold acts of the legislature when their constitutionality is debatable."

The Supreme Court has found that constitutional prohibitions against special legislation do not prohibit classifications, as long as the classification is not purely arbitrary. "It must be natural and reasonable, and appropriate to the occasion. There must be some such difference in the situation of the subjects of the different classes as to reasonably justify some variety of rule in respect thereto." In the facts you present, a gasoline retailer who meets the definition of "distributor" in § 58.1-2201 and complies with the requirements for licensure may be licensed as a distributor under the 2001 Act. In addition, a jobber may be licensed either as a distributor or simply a transporter of gasoline to a gasoline retailer. Consequently, both may be licensed as a distributor and, depending on who pays the supplier for the fuel, both may take advantage of the one percent discount under the 2001 Act. Consequently, the legislative decision to permit the entity that pays the supplier for the fuel at the terminal rack to take advantage of the one percent discount clearly does not create a classification between jobbers and gasoline retailers. The 2001 Act does not, therefore, in my opinion, constitute prohibited special legislation.


3 "Elective supplier" means a supplier who (i) is required to be licensed in the Commonwealth and (ii) elects to collect the tax due the Commonwealth on motor fuel that is removed at a terminal located in another state and has Virginia as its destination state." Section 58.1-2201.

4 "Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a supplier’s license under [the 2001 Act]." Section 58.1-2201.

5 "Jobber" is defined generally as "a wholesaler who operates on a small scale or who sells only to retailers and institutions." Merriam Webster’s Collegiate Dictionary 630 (1996).
Section 58.1-2204(A) requires "[a] person [to] obtain a license issued by the Commissioner before conducting the activities of:

"1. A refiner, who shall be licensed as a supplier;

"2. A supplier;

"3. A terminal operator;

"4. An importer;

"5. An exporter;

"6. A blender;

"7. A motor fuel transporter;

"8. A bulk user of undyed diesel fuel;

"9. A retailer of undyed diesel fuel;

"10. An aviation consumer;

"11. A bonded importer; or

"12. An elective supplier."

See supra note 6.


See § 58.1-2219(B).


'Motor fuel transporter' means a person who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel." Section 58.1-2201.


14 County Bd. of Supervisors v. Am. Trailer Co., 193 Va. at 78, 68 S.E.2d at 120.


18 Peery v. Board of Funeral Directors, 203 Va. at 165, 123 S.E.2d at 97.

19 Martin’s Ex’rs v. Commonwealth, 126 Va. at 612, 102 S.E. at 80.