Amended
Agenda Item 7
Handout

Memoranda of Agreement:
Franklin and Southampton

Hampton Roads Transportation Planning Organization

June 20, 2013
AMENDED

ITEM #7: MEMORANDA OF AGREEMENT: FRANKLIN AND SOUTHAMPTON

In reference to Workshop Agenda Item #7 and Consent Agenda Item #12-M, the Virginia Department of Taxation and Virginia Department of Motor Vehicles have determined that the new 0.7% additional Retail Sales and Use Tax and 2.1% Fuels Wholesale Sales Tax will not be imposed on the Counties of Gloucester and Surry (Attachments A and B).

In addition, attached is a letter from the Virginia Attorney General to the Governor (Attachment C) stating that in his view, “on July 1, 2013, neither Surry County nor Gloucester County will be subject to the regional transportation taxes and fees included in the Act.” Furthermore, the letter states, “revenues raised by the regional transportation taxes and fees included in the Act may not be used for projects in either Surry County or Gloucester County.”

In addition, the Federal Highway Administration has submitted information (Attachment D) on Secretary of Transportation’s options from a federal perspective, indicating that “any action on the planning, programming, and funding of projects that are the responsibility of the MPO remain with the MPO, and that any actions of non-members remain separate.”

The individual Memorandum of Agreements between the City of Franklin and the County of Southampton are attached.

Attachment A – Tax Bulletin 13-8 – Virginia Department of Taxation
Attachment B – Virginia Fuels Tax Information and News – 2013 Legislation
Attachment C – Letter from the Senior Assistant Attorney General to the Governor
Attachment D – FHWA Letter regarding MPA Boundary and MPO Voting Membership
Attachment E – City of Franklin Memorandum of Agreement
Attachment F – Southampton County Memorandum of Agreement
June 13, 2013

The Honorable Robert F. McDonnell
Governor of the Commonwealth of Virginia
Office of the Governor
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

Dear Governor McDonnell:

The Supreme Court of Virginia recognizes that construction of the Constitution and statutes of the Commonwealth by the Attorney General under § 2.2-505 of the Code of Virginia “is of the most persuasive character and is entitled to due consideration.” The same status and weight, however, is not afforded informal opinions and advice rendered by deputy and assistant attorneys general. The views expressed herein do not constitute an opinion of the Attorney General under the provisions of § 2.2-505. Consequently, this response to your inquiry represents only the individual views of one of the counsel to the Attorney General.

Issue Presented

You inquire whether Surry and Gloucester Counties are to be subject, on July 1, 2013, to the regional transportation taxes and fees included in the 2013 Transportation Funding Bill, Chapter 766 of the Virginia Acts of Assembly, 2013 Reconvened Session (“the Act”).

Response

It is my view that on July 1, 2013, neither Surry County nor Gloucester County will be subject to the regional transportation taxes and fees included in the Act.

Background

You relate that Surry County is physically located in Planning District 19, and that Gloucester County is located in Planning District 18. You further relate that Surry County, pursuant to § 15.2-4220 of the Code of Virginia, has elected to become a member of the Planning District Commission for Planning

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2 See VA. CODE ANN. § 2.2-501 (2011) (permitting Attorney General to appoint such deputy and assistant attorneys general as may be necessary).

3 Planning Districts are created pursuant to Chapter 42 of Title 15.2-1 in order to facilitate regional cooperation and to promote joint effort in regional planning in matters of a regional nature. See VA. CODE ANN. § 15.2-4201 (2012).
Honorable Robert F. McDonnell  
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District 23. We note that Gloucester County is also a member of the Planning District Commission for Planning District 23.

Applicable Law and Discussion

The Act provides for the imposition of certain specific taxes and fees by localities “located in” a planning district that meets certain population, registered vehicle, and transit ridership criteria.\(^4\) Currently, Planning District 23, and Planning District 8 are the only districts that meet these criteria.\(^5\)

Surry County is located in Planning District 19. Gloucester County is located in Planning District 18. The fact that Surry County and Gloucester County are also members of the District 23 Planning District Commission does not change the fact that Surry County is located in Planning District 19 and Gloucester County is located in Planning District 18. Section 15.2-4220 of the Code of Virginia does provide that a county or other locality can be a member of more than one planning district commission. Nevertheless, a locality can be physically “located in” only one planning district. Ordinarily when a particular word or phrase in a statute is not defined therein one must give it its ordinary meaning.\(^6\) Surry is located in Planning District 19 and only Planning District 19. Similarly, Gloucester is located in Planning District 18. The additional local taxes provided by the Act do not apply to localities located in these planning districts.

I also note that the Act, in creating the Hampton Roads Transportation Fund, requires that the Hampton Roads Transportation Planning Organization spend money from the Fund “solely for new construction projects on new or existing roads, bridges, and tunnels in the localities comprising Planning District 23.”\(^7\) Thus, revenues raised by the regional transportation taxes and fees included in the Act may not be used for projects in either Surry County or Gloucester County.

Conclusion

Accordingly, it is my view that on July 1, 2013, neither Surry County nor Gloucester County will be subject to the regional transportation taxes and fees included in the Act.

Sincerely,

Jeffrey R. Allen  
Senior Assistant Attorney General


\(^5\) Planning District 8 is located in Northern Virginia and is not germane to the discussion here.


IMPORTANT INFORMATION REGARDING THE
UPCOMING RETAIL SALES AND USE TAX CHANGES

NEW 0.7 PERCENT ADDITIONAL RETAIL SALES AND USE TAX IN CERTAIN
REGIONS WILL NOT BE IMPOSED IN COUNTIES OF GLOUCESTER AND SURRY

The Department of Taxation has received legal advice that the new 0.7 percent additional Retail Sales and Use Tax that will be imposed in the Northern Virginia and Hampton Roads Regions will not be imposed in the Counties of Gloucester and Surry.

Effective July 1, 2013, House Bill 2313 (Acts of Assembly 2013, Chapter 766), increases the rate of the Retail Sales and Use Tax by 0.3 percent on a statewide basis and imposes an additional Retail Sales and Use Tax of 0.7 percent in the Northern Virginia and Hampton Roads Regions.

The new law provides that the additional 0.7 percent tax applies in the Hampton Roads counties and cities located in Planning District 23. Although the Counties of Gloucester and Surry are members of the Planning District 23 Commission, they are not located in Planning District 23. Accordingly, the Counties of Gloucester and Surry will not be subject to the additional 0.7 percent state Retail Sales and Use Tax to be imposed in the region effective July 1, 2013.

The Retail Sales and Use Tax will be imposed in the Counties of Gloucester and Surry at the rate of 5.3 percent, effective July 1, 2013. The Retail Sales and Use Tax will be imposed in the Counties of Isle of Wight, James City, Southampton, and York and the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg at the rate of 6.0 percent, effective July 1, 2013.

The Department of Taxation is working to notify affected dealers, taxpayers, tax practitioners, and other interested parties of this change. The Department plans to email e-Alerts to all subscribers. The Department also plans to mail notification letters to in-state dealers located in the affected localities as well as to all out-of-state dealers. Additionally, the Department will update its website and the Guidelines it issued on May 1, 2013 for the increase. The revised Guidelines will be available on-line in the Law, Rules and Decisions section of the Department’s website. Forms, instructions, frequently asked questions and other helpful information available on the Department’s website will also be revised.

For additional information, please contact the Office of Customer Services at (804) 367-8037 or through the “Live Chat” service on the Department’s website, www.tax.virginia.gov.
During the 2013 Session of the Virginia General Assembly, House Bill 2313 was passed which impacts the Virginia Fuels Tax Act and the Motor Vehicle Fuels Sales Tax Act. Highlights of the bill that will be effective July 1, 2013, are listed below.

VIRGINIA FUELS TAX ACT

DEFINITIONS

The following definitions have been added or modified.

"Alternative fuel" means a combustible gas, liquid or other energy source that can be used to generate power to operate a highway vehicle and that is neither a motor fuel nor electricity used to recharge an electric motor vehicle or a hybrid electric motor vehicle.

"Alternative fuel vehicle" means a vehicle equipped to be powered by a combustible gas, liquid, or other source of energy that can be used to generate power to operate a highway vehicle and that is neither a motor fuel nor electricity used to recharge an electric motor vehicle or a hybrid electric motor vehicle.

"Hybrid electric motor vehicle" means a motor vehicle that uses electricity and another source of motive power.

"Wholesale price" means the price at the rack.

TAX RATES

Gasoline and Diesel

Beginning July 1, 2013, the seventeen and one-half cents per gallon tax on gasoline, gasohol and diesel will be replaced with new fuel tax rates that will fluctuate every January and July. The gasoline rate will be 3.5 percent of the statewide average wholesale price of a gallon of unleaded regular gasoline for the applicable base period. The diesel rate will be six percent of the statewide average wholesale price of a gallon of diesel fuel for the applicable base period.

In computing the average wholesale price of a gallon of unleaded regular gasoline and the average wholesale price of a gallon of diesel, the Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price be less than the statewide average wholesale price of a gallon of unleaded regular gasoline or diesel on February 20, 2013, which was $3.17 and $3.36, respectively.

For the determination period of Dec 1, 2012 through May 31, 2013, the average wholesale price for gasoline was $2.81 and the average wholesale price for diesel was $3.10. Based on this data, the February 20, 2013 pricing shall be used for the tax period beginning July 1, 2013. Based on the established tax rates, the assessment on gasoline is 11.1 cents per gallon and the assessment on diesel is 20.2 cents per gallon. This tax is assessed and collected at the wholesale (rack) level.

Tax rates are posted on www.dmvnow.com. Continue to check out the website for new information.
COMING SOON!!!!

RSS Feeds- a way to get the rates faster.

TAX ON ALTERNATIVE FUELS AND ALTERNATIVE FUELS VEHICLES

Alternative fuels will continue to be taxed at the gasoline rate after it is converted to the Gasoline Gallon Equivalent (GGE). Check out www.dmvnow.com for assistance with converting alternative fuels to GGE.

The Bill modifies this section as follows for alternative fuels vehicles.

1) Increases the annual license tax per vehicle from $50 to $64 when the vehicle is registered.

2) Continues to impose the annual license tax on electric vehicles and extends the tax to hybrid electric motor vehicles and alternative fuel vehicles.

3) Excludes the following from the license tax: any vehicle that is subject to the bulk alternative fuels tax, is subject to the federal excise tax, is a moped, or is registered under the International Registration Plan.

FUELS TAX REFUNDS ON DIESEL PASSENGER VEHICLES

Any person purchasing diesel fuel used in operating or propelling a passenger car, a pickup or panel truck, or a truck having a gross vehicle weight rating of 10,000 pounds or less is entitled to a refund of a portion of the taxes paid in an amount equal to the difference between the rate of tax on diesel fuel and the rate of tax on gasoline at the time of purchase. "Passenger car," "pickup or panel truck," and "truck" are defined as follows.

"Passenger car" means every motor vehicle other than a motorcycle designed and used primarily for the transportation of no more than 10 persons including the driver.

"Pickup or panel truck" means every motor vehicle designed for the transportation of property and having a registered gross weight of 7,500 pounds or less.

"Truck" means 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.

Apply online at www.dmvnow.com for a refund if you purchase diesel fuel for any of the qualifying vehicles.

TAX ON FUEL IN INVENTORY

A one-time tax will be imposed on all licensed distributors as of the business day proceeding July 1, 2013. This tax will be imposed on gasoline, gasohol, and diesel held in storage by a licensed distributor at the close of business. The tax will be payable by the licensed distributor and calculated using the inventory reported on the June 2013 Distributor’s Motor Fuel Tax Return.

Basically, the amount of the tax liability shall be determined separately for gasoline and gasohol and for diesel fuel. Each fuel type shall be calculated as the difference between the tax rate specified for the type of fuel as of June 30, 2013 and the tax rate specified for that type of fuel on July 1, 2013, multiplied by the number of gallons of that type of fuel in storage as of the close of the business day preceding July 1, 2013. The liability will be adjusted for dead storage. If the net amount results in a liability, the distributor shall remit that amount to the Department no later than January 1, 2014. If the net amount results in a refund, DMV will issue a refund beginning October 2013.

Attachment C
MOTOR VEHICLE FUELS SALES TAX ACT

During the 2012 Session of the Virginia General Assembly, Senate Bill 503 passed that transferred the administration and collection of the 2.1% Fuels Wholesale Sales Tax (Wholesale Sales Tax) for the Northern Virginia area from the Department of Taxation (TAX) to the Department of Motor Vehicles (DMV) effective July 1, 2013. During the 2013 session, House Bill 2313 added the 2.1 Percent Fuels Wholesale Sales Tax for the Hampton Roads Planning District Commission’s jurisdictions. This is also effective July 1, 2013.

The Wholesale Sales Tax is a 2.1% tax on fuels sold/delivered to retail dealers and end users in the Hampton Roads Planning District Commission’s jurisdictions. This tax is based on the sales price of the fuels and is in addition to all other taxes on fuels. Persons selling fuels are required to be registered as a Wholesale Distributor, collect the wholesale sales tax from the purchaser and remit such tax to DMV.

The Wholesale Sales Tax for the Hampton Roads Planning District Commission is comprised of the following counties and cities:
- Counties of: Isle of Wight, James City, Southampton, York.
- Cities of: Chesapeake, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Poquoson, Suffolk, Virginia Beach, Williamsburg.

NOTE: Counties of Gloucester and Surry are not included.

CONTACTS

FUELS TAX information can be found under COMMERCIAL SERVICES on www.dmvnow.com.

If you have any questions about any information in this document, contact Department of Motor Vehicles Tax Services.

- Director of Tax Services
  Tammy.West@dmv.virginia.gov
  (804) 367-0883

- Deputy Director of Fuels Tax
  Latrice.Ampy@dmv.virginia.gov
  (804) 367-8444

- Deputy Director of Wholesale Sales Tax, Special Collections and Refunds
  Betty.Jessie@dmv.virginia.gov
  (804) 367-4329
June 13, 2013

The Honorable Molly Ward, Chair
c/o Mr. Dwight Farmer, Executive Director
Hampton Roads Transportation Planning Organization
The Regional Building
723 Woodlake Drive
Chesapeake, Virginia 23320

Re: MPA Boundary and MPO Voting Membership

Dear Ms. Ward:

The April 4, 2013 letter from the Secretary of Transportation, Sean Connaughton, provided two options to ensure that Surry County, Southampton County, and the City of Franklin have a vote on the planning, programming, and funding of projects supported by HB2313. One option is to expand the metropolitan planning area (MPA) boundary to include Surry County, Southampton County, and the City of Franklin. The other option is to develop an agreement between the Hampton Roads MPO and these three non-member localities, “...that guarantees representation and voting rights for the non-members on matters involving the planning, programming and funding of projects supported by HB2313 revenues.”

With this in mind, the Federal Highway Administration (FHWA) is writing to you to provide information on each of these options from a federal perspective.

Expansion of Metropolitan Planning Area

Federal regulations require that the boundaries of a MPA be agreed to by the MPO and Governor. The MPA is defined in 23 CFR 450.104 as “the geographic area determined by agreement between the metropolitan planning organization (MPO) for the area and the Governor, in which the metropolitan transportation planning process is carried out.” The area outside of the MPA is defined as the non-metropolitan area which means “a geographic area outside a designated metropolitan planning area.” At a minimum, the MPA boundary must encompass the existing urbanized area (as defined by the Bureau of the Census) plus the contiguous area expected to become urbanized within a 20-year forecast period. Additional adjustments may be made to the boundary by the MPO and Governor as long as the minimum statutory requirement is met. Ultimately, it is the MPO and Governor who decide the appropriate MPA boundary for the MPO.
The MPO includes the jurisdictions contained within the agreed upon or designated MPA boundary. The MPO, recognized by FHWA and Federal Transit Administration (FTA), sets forth the national policy for each urbanized area to carry out a continuing, cooperative and comprehensive multimodal transportation planning and decision-making process. The MPO’s main responsibilities include voting on transportation related matters within the metropolitan planning area including approving, amending, modifying, or updating the regional Long Range Transportation Plan (LRTP), the strategic Transportation Improvement Program (TIP) and annual Unified Planning Work Program (UPWP). This regional planning process is certified every four years jointly by the FHWA and FTA. Projects that need to be included in the metropolitan TIP are: all projects using FHWA and/or FTA funds; all regionally significant projects requiring an FHWA or FTA action regardless of funding source; and regionally significant projects to be funded with Federal funds other than those administered by the FHWA or FTA or regionally significant projects funded with non-federal funds (23 CFR 450.324(d)).

Jurisdictions outside of the MPA boundary are not eligible to become voting members of the MPO and do not approve the metropolitan planning and programming documents nor partake in selecting/ranking potential transportation projects containing Federal funds including those that are supplemented with regional “HB2313 revenues”. In order for jurisdictions outside of the MPA boundary to become MPO voting members in the metropolitan planning, programming, and decision-making process, the MPO and Governor must agree to expand the MPA boundary to include these jurisdictions. Once the boundary is expanded, elected officials representing these jurisdictions can then become part of the MPO with voting rights. Should the MPO and Governor decide to expand an MPA boundary, the following implications should be considered:

- The modeling conducted for the MPA will need to be expanded to include the new jurisdictions.
- Jurisdictions within the new MPA boundary will be included in the development of estimated revenues and project costs contained in financial plans that support the MPO’s LRTP and TIP.
- Jurisdictions within the new MPA boundary would be eligible to compete for federal Surface Transportation Program (STP) and Transportation Alternatives Program (TAP) funds that are sub-allocated to the urbanized areas, as well as the MPO’s PL and Section 5303 transportation planning funds.
Development of an MOA

Only the MPO (and its members) can select, approve, and amend into the LRTP and TIP the region's transportation projects containing Federal funds including those that are supplemented with HB2313 revenues. Granting voting rights (via an MOA) to jurisdictions outside of the Hampton Roads MPA boundary on transportation matters that are the responsibility of the MPO pursuant to 23 CFR 450 Subpart C would be inconsistent with that regulation and the MPO's self-certification compliance statement. We are not taking a specific position on the approach of utilizing a MOA between the Hampton Roads MPO and the City of Franklin and Counties of Southampton and Surry, but we trust that you will ensure that any action on the planning, programming, and funding of projects that are the responsibility of the MPO remain with the MPO, and that any actions of non-members remain separate.

If you have any questions, please direct them to Mr. Ivan Rucker, at the FHWA Virginia Division, (804) 775-3350 or Ivan.Rucker@dot.gov.

Sincerely,

Irene Rico
Division Administrator
Federal Highway Administration

By: Edward S. Sundra
Director of Program Development

cc: Mr. Jim Utterback, District Administrator, Virginia Department of Transportation
Mr. Eric Stringfield, Virginia Department of Transportation (Hampton District)
Ms. Marsha Fiol, Virginia Department of Transportation (Central Office)
Ms. Reta Busher, Virginia Department of Transportation (Central Office)
Ms. Brigid Hynes-Cherin, FTA Region III Administrator

Attachment D