WEST VIRGINIA CODE: §11-14C-5

§11-14C-5. Taxes levied; rate.

(a) There is hereby levied on all motor fuel an excise tax composed of a flat rate equal to $.205 per invoiced gallon and, on alternative fuel, on each gallon equivalent, plus a variable component comprised of:

(1) On motor fuel other than alternative fuel, either the tax imposed by section eighteen-b, article fifteen of this chapter or the tax imposed under section thirteen-a, article fifteen-a of this chapter, as applicable. The variable component shall be equal to five percent of the average wholesale price of the motor fuel: Provided, That on and after January 1, 2010, the average wholesale price shall be no less than $2.34 per invoiced gallon and is computed as hereinafter prescribed in this section: Provided, however, That on and after July 1, 2017, the average wholesale price of motor fuel may not be determined to be less than $3.04 per invoiced gallon for all gallons of motor fuel sold during the reporting period notwithstanding any provision of this code to the contrary and on and after July 1, 2017, the tax per gallon may not be less than 15.2 cents per gallon of motor fuel; and

(2) On alternative fuel, either the tax imposed by section eighteen-b, article fifteen of this chapter or the tax imposed under section thirteen-a, article fifteen-a of this chapter, as applicable. The variable component of the tax on alternative fuel shall be equal to five percent of the average wholesale price of the alternative fuel.

(b) Determination of average wholesale price. —

(1) To simplify determining the average wholesale price of all motor fuel, the Tax Commissioner shall, effective with the period beginning the first day of the month of the effective date of the tax and each January 1 thereafter, determine the average wholesale price of motor fuel for each annual period on the basis of sales data gathered for the preceding period of July 1 through October 31. Notification of the average wholesale price of motor fuel shall be given by the Tax Commissioner at least thirty days in advance of each January 1 by filing notice of the average wholesale price in the State Register and by other means as the Tax Commissioner considers reasonable.

(2) The “average wholesale price” means the single, statewide average per gallon wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal excise taxes on each gallon of motor fuel or on each gallon equivalent of alternative fuel as determined by the Tax Commissioner from information furnished by suppliers, importers and distributors of motor fuel and alternative-fuel providers, alternative-fuel bulk end users and retailers of alternative fuel in this state, or other information regarding wholesale selling prices as the Tax Commissioner may gather or a combination of information. On and after January 1, 2010, in no event shall the average wholesale price be determined to be less than $2.34 per gallon of motor fuel: Provided, That on and after July 1, 2017, the average

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wholesale price may not be determined to be less than $3.04 per gallon of motor fuel. On and after January 1, 2011, the average wholesale price shall not vary by more than ten percent from the average wholesale price of motor fuel as determined by the Tax Commissioner for the previous calendar year: Provided, however, That in no case shall the average wholesale price of motor fuel be determined to be less than $3.04 per invoiced gallon. Any limitation on the average wholesale price of motor fuel contained in this subsection shall not be applicable to alternative fuel.

(3) All actions of the Tax Commissioner in acquiring data necessary to establish and determine the average wholesale price of motor fuel, in providing notification of his or her determination prior to the effective date of a change in rate, and in establishing and determining the average wholesale price of motor fuel may be made by the Tax Commissioner without compliance with the provisions of article three, chapter twenty-nine-a of this code.

(4) In an administrative or court proceeding brought to challenge the average wholesale price of motor fuel as determined by the Tax Commissioner, his or her determination is presumed to be correct and shall not be set aside unless it is clearly erroneous.

(c) Every licensee who, on the effective date of any rate change, has in inventory any motor fuel upon which the tax or any portion thereof has been previously paid shall take a physical inventory and file a report thereof with the commissioner, in the format as required by the commissioner, within thirty days after the effective date of the rate change, and shall pay to the commissioner at the time of filing the report any additional tax due under the increased rate.

(d) The Tax Commissioner shall determine by January 1, 2014, the gasoline gallon equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State Register and by other means that the Tax Commissioner considers reasonable. The Tax Commissioner may redetermine the gasoline gallon equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State Register at least thirty days in advance of January 1 for the next succeeding tax year. For purposes of this notice, the Tax Commissioner may adopt or incorporate by reference provisions of the National Institute of Standards and Technology, United States Department of Commerce, the Internal Revenue Code, United States Treasury Regulations, the Internal Revenue Service publications or guidelines or other publications or guidelines which may be useful in determining, setting or describing the gasoline gallon equivalent for each alternative fuel used as motor fuel.

(e) Effective date. — The amendments to this section enacted during the first extraordinary session of 2017 shall take effect on July 1, 2017.

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