WEST VIRGINIA CODE: §11-15-18B

§11-15-18b. Tax on motor fuel.

(a) General. — All sales of motor fuel and alternative fuel subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter, are subject to the tax imposed by this article and comprises the variable component of the tax imposed by section five, article fourteen-c of this chapter and is collected and remitted at the time the tax imposed by said section is remitted. Sales of motor fuel and alternative fuel upon which the tax imposed by this article has been paid is not again taxed under the provisions of this article. This section means that all gallons of motor fuel and equivalent gallons of alternative fuel sold and delivered or delivered in this state are taxed one time.

(b) Measure of tax. — The measure of tax imposed by this article is as follows:

(1) On sales of motor fuel, the average wholesale price as defined and determined in section five, article fourteen-c of this chapter. For purposes of maintaining revenue for highways, and recognizing that the tax imposed by this article is generally imposed on gross proceeds from sales to ultimate consumers, whereas the tax on motor fuel herein is imposed on the average wholesale price of the motor fuel; in no case, for the purposes of taxation under this article, may the average wholesale price be determined to be less than 97 cents per gallon of motor fuel for all gallons of motor fuel sold during the reporting period, notwithstanding any provision of this article to the contrary. On and after January 1, 2010, for the purpose of taxation under this article, in no case may the average wholesale price be determined to be less than $2.34 per gallon of motor fuel for all gallons of motor fuel sold during the reporting period notwithstanding any provision of this article to the contrary: Provided, That on and after July 1, 2017, in no case may the average wholesale price be determined to be less than $3.04 per gallon of motor fuel for all gallons of motor fuel sold during the reporting period notwithstanding any provision of this article 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. Any limitation on the average wholesale price of motor fuel contained in this subsection shall not be applicable to alternative fuel.

(2) On sales of alternative fuel, the average wholesale price as defined and determined in section five, article fourteen-c of this chapter.

(c) Definitions. — For purposes of this article, the terms “gasoline” and “special fuel” and “alternative fuel” are defined as provided in section two, article fourteen-c of this chapter. Other terms used in this section have the same meaning as when used in a similar context in said article.

(d) Tax return and tax due. —

(1) The tax imposed by this article on sales of motor fuel shall be paid by each taxpayer on or

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before the last day of the calendar month by check, bank draft, certified check or money order payable to the Tax Commissioner for the amount of tax due for the preceding month notwithstanding any provision of this article to the contrary. The commissioner may require all or certain taxpayers to file tax returns and payments electronically. The return required by the commissioner shall accompany the payment of tax. If no tax is due, the return required by the commissioner shall be completed and filed on or before the last day of the month.

(2) The tax due under this article comprising the variable component of the tax due under article fourteen-c of this chapter on alternative fuel, is due and shall be collected and remitted at the time the tax imposed by section five, article fourteen-c of this chapter is due, collected and remitted.

(e) Compliance. — To facilitate ease of administration and compliance by taxpayers, the Tax Commissioner shall require persons liable for the tax imposed by this article on sales of motor fuel to file a combined return and make a combined payment of the tax due under this article on sales of motor fuel and the tax due under article fourteen-c of this chapter on motor fuel. In order to encourage use of a combined return each month and the making of a single payment each month for both taxes, the due date of the return and tax due under article fourteen-c of this chapter is the last day of each month notwithstanding any provision in said article to the contrary. The Tax Commissioner may prescribe reporting and payment requirements for tax due under this article on alternative fuel which accommodate the due dates and requirements prescribed in this article and article fourteen-c of this chapter, either under a separate return and payment or a combined return and payment, within the discretion of the Tax Commissioner.

(f) Dedication of tax. — All tax collected under the provisions of this section, after deducting the amount of refunds lawfully paid, shall be deposited in the road fund in the State Treasurer’s office and used only for the purpose of construction, reconstruction, maintenance and repair of highways and payment of principal and interest on state bonds issued for highway purposes. Notwithstanding any provision to the contrary, tax collected on the sale of aviation fuel after deducting the amount of refunds lawfully paid shall be deposited in the State Treasurer’s office and transferred to the state Aeronautical Commission to be used for the purpose of matching federal funds available for the reconstruction, maintenance and repair of public airports and airport runways.

(g) Construction. — This section does not tax a sale of motor fuel which this state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

(h) Effective date. — The provisions of this section take effect on January 1, 2004. The provisions of this section enacted during the 2007 legislative session take effect on January 1, 2008.The provisions of this section enacted during the 2013 regular legislative session take effect on January 1, 2014. The amendments of this section enacted during the first extraordinary session of 2017 take effect on July 1, 2017.

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