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CLERK OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 581

(By Senator Helmick,)

PASSED March 9, 2006

In Effect 90 days from Passage

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 581

(BY SENATOR HELMICK)

[Passed March 9, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §11-14C-2 of the Code of West Virginia, 1931, as amended, relating to the motor fuel excise tax; and amending the definition of "person" to include responsible persons.

Be it enacted by the Legislature of West Virginia:

That §11-14C-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-2. Definitions.

1 As used in this article and unless the context requires
2 otherwise, the following terms have the meaning ascribed
3 herein.

4 (1) "Agricultural purposes" means the activities of:

5 (A) Cultivating the soil, including the planting and
6 harvesting of crops, for the commercial production of food,
7 fiber and ornamental woodland products;

8 (B) Using land for breeding and management of farm
9 livestock, including dairy, apiary, equine or poultry
10 husbandry; and

11 (C) Using land for the practice of horticulture including
12 the growing of Christmas trees, orchards and nursery
13 stock: *Provided*, That agricultural purposes shall not
14 include commercial forestry, growing of timber for
15 commercial purposes or any other activity that normally
16 would not be included in subdivision (A), (B) or (C) of this
17 definition.

18 (2) "Aircraft" includes any airplane or helicopter.

19 (3) "Alcohol" means motor fuel grade ethanol or a
20 mixture of motor fuel-grade ethanol and methanol,
21 excluding denaturant and water that is a minimum of
22 ninety-eight percent ethanol or methanol by volume.

23 (4) "Article" or "this article" means article fourteen-c,
24 chapter eleven of this code.

25 (5) "Assessment" means a written determination by the
26 commissioner of the amount of taxes owed by a taxpayer.

27 (6) "Aviation fuel" means aviation gasoline or aviation
28 jet fuel.

29 (7) "Aviation gasoline" means motor fuel designed for
30 use in the operation of aircraft other than jet aircraft, and
31 sold or used for that purpose.

32 (8) "Aviation jet fuel" means motor fuel designed for use
33 in the operation of jet or turbo-prop aircraft and sold or
34 used for that purpose.

35 (9) "Biodiesel fuel" means any motor fuel or mixture of
36 motor fuels that is derived, in whole or in part, from
37 agricultural products or animal fats, or the wastes of such
38 products or fats, and is advertised as, offered for sale as,
39 suitable for use or used as motor fuel in an internal
40 combustion engine.

41 (10) "Blended fuel" means a mixture composed of
42 gasoline or diesel fuel and another liquid, including, but
43 not limited to, gasoline blend stocks, gasohol, ethanol,
44 methanol, fuel grade alcohol, diesel fuel enhancers and
45 resulting blends, other than a de minimus amount of a
46 product such as carburetor detergent or oxidation inhibi-
47 tor, that can be used as a motor fuel in a highway vehicle.

48 (11) "Blender" means a person who produces blended
49 motor fuel outside the bulk transfer/terminal system.

50 (12) "Blending" means the mixing of one or more
51 petroleum products, with or without another product,
52 regardless of the original character of the product blended,
53 if the product obtained by the blending is capable of use in
54 the generation of power for the propulsion of a motor
55 vehicle, an airplane or a marine vessel. Blending does not
56 include mixing that occurs in the process of refining by the
57 original refiner of crude petroleum or the blending of
58 products known as lubricating oil in the production of
59 lubricating oils and greases.

60 (13) "Bulk plant" means a motor fuel storage and
61 distribution facility that is not a terminal and from which
62 motor fuel may be removed at a rack.

63 (14) "Bulk transfer" means any transfer of motor fuel
64 from one location to another by pipeline tender or marine
65 delivery within a bulk transfer/terminal system, including,
66 but not limited to, all of the following:

67 (A) A marine vessel movement of motor fuel from a
68 refinery or terminal to a terminal;

69 (B) Pipeline movements of motor fuel from a refinery or
70 terminal to a terminal;

71 (C) Book transfer of motor fuel within a terminal
72 between licensed suppliers prior to completion of removal
73 across the rack; and

74 (D) Two-party exchange between licensed suppliers or
75 between licensed suppliers and permissive suppliers.

76 (15) "Bulk user" means a person who maintains storage
77 facilities for motor fuel and uses part or all of the stored
78 motor fuel to operate a motor vehicle, watercraft or
79 aircraft.

80 (16) "Bulk transfer/terminal system" means the motor
81 fuel distribution system consisting of refineries, pipelines,
82 marine vessels, and terminals. Motor fuel in a refinery, a
83 pipeline, a terminal or a marine vessel transporting motor
84 fuel to a refinery or terminal is in the bulk trans-
85 fer/terminal system. Motor fuel in a motor fuel storage
86 facility including, but not limited to, a bulk plant that is
87 not part of a refinery or terminal, in the motor fuel supply
88 tank of any engine or motor vehicle, in a marine vessel
89 transporting motor fuel to a motor fuel storage facility
90 that is not in the bulk transfer/terminal system, or in any
91 tank car, rail car, trailer, truck or other equipment suit-
92 able for ground transportation is not in the bulk trans-
93 fer/terminal system.

94 (17) "Carrier" means any operator of a pipeline or
95 marine vessel engaged in the business of transporting
96 motor fuel above the terminal rack.

97 (18) "Code" means the Code of West Virginia of one
98 thousand nine hundred thirty-one, as amended.

99 (19) "Commercial watercraft" means a watercraft
100 employed in the business of commercial fishing, transport-
101 ing persons or property for compensation or hire or any
102 other trade or business.

103 (20) "Commissioner" or "tax commissioner" means the
104 West Virginia State Tax Commissioner or his or her
105 delegate.

106 (21) "Compressed natural gas" means natural gas that
107 has been compressed and dispensed into motor fuel storage

108 containers and is advertised as, offered for sale as, suitable
109 for use as, or used as an engine motor fuel.

110 (22) "Corporate or partnership officer" means an officer
111 or director of a corporation, partner of a partnership, or
112 member of a limited liability company, who as an officer,
113 director, partner or member is under a duty to perform on
114 behalf of the corporation, partnership, or limited liability
115 company the tax collection, accounting or remitting
116 obligations.

117 (23) "Dead storage" is the amount of motor fuel that
118 cannot be pumped out of a motor fuel storage tank because
119 the motor fuel is below the mouth of the draw pipe. The
120 amount of motor fuel in dead storage is two hundred
121 gallons for a tank with a capacity of less than ten thousand
122 gallons and four hundred gallons for a tank with a capac-
123 ity of ten thousand gallons or more.

124 (24) "Denaturants" means and includes gasoline, natural
125 gasoline, gasoline components or toxic or noxious materi-
126 als added to motor fuel grade ethanol to make it unsuit-
127 able for beverage use, but not unsuitable for automotive
128 use.

129 (25) "Designated inspection site" means any state
130 highway inspection station, weigh station, agricultural
131 inspection station, mobile station or other location desig-
132 nated by the commissioner to be used as a motor fuel
133 inspection site.

134 (26) "Destination state" means the state, territory, or
135 foreign country to which motor fuel is directed for delivery
136 into a storage facility, a receptacle, a container or a type
137 of transportation equipment for the purpose of resale or
138 use. The term shall not include a tribal reservation of any
139 recognized Native American tribe.

140 (27) "Diesel fuel" means any liquid that is advertised as,
141 offered for sale as, sold for use as, suitable for use as or
142 used as a motor fuel in a diesel-powered highway vehicle

143 or watercraft. The term includes #1 fuel oil, #2 fuel oil,
144 undyed diesel fuel and kerosene, but shall not include
145 gasoline or aviation fuel.

146 (28) "Distributor" means a person who acquires motor
147 fuel from a licensed supplier, permissive supplier, or from
148 another licensed distributor for subsequent sale or use.

149 (29) "Diversion" means transporting motor fuel outside
150 a reasonably direct route from the source to the destina-
151 tion state.

152 (30) "Division" or "State Tax Division" means the Tax
153 Division of the West Virginia Department of Revenue.

154 (31) "Dyed diesel fuel" means diesel fuel that meets the
155 dyeing and marking requirements of section 4082, Title 26,
156 United States Code, regardless of how the diesel fuel was
157 dyed.

158 (32) "End seller" means the person who sells motor fuel
159 to the ultimate user of the motor fuel.

160 (33) "Export" means to obtain motor fuel in West
161 Virginia for sale or other distribution in another state,
162 territory, or foreign country.

163 (34) "Exporter" means a person that exports motor fuel
164 from this state. The seller is the exporter of motor fuel
165 delivered out-of-state by or for the seller and the pur-
166 chaser is the exporter of motor fuel delivered out-of-state
167 by or for the purchaser.

168 (35) "Fuel" means motor fuel.

169 (36) "Fuel alcohol" means methanol or motor fuel grade
170 ethanol.

171 (37) "Fuel grade ethanol" means the ASTM standard in
172 effect on the effective date of this article as the D-4806
173 specification for denatured motor fuel grade ethanol for
174 blending with gasoline.

175 (38) "Fuel supply tank" means any receptacle on a motor
176 vehicle from which motor fuel is supplied for the propul-
177 sion of the motor vehicle.

178 (39) "Gallon" means a unit of liquid measure as custom-
179 arily used in the United States containing two hundred
180 thirty-one cubic inches by volume.

181 (40) "Gasohol" means a blended motor fuel composed of
182 gasoline and motor fuel alcohol.

183 (41) "Gasoline" means any product commonly or
184 commercially known as gasoline, regardless of classifica-
185 tion, that is advertised as, offered for sale as, sold for use
186 as, suitable for use as or used as motor fuel in an internal
187 combustion engine, including gasohol, but does not include
188 special fuel as defined in this section.

189 (42) "Gasoline blend stocks" includes any petroleum
190 product component of gasoline, such as naphtha,
191 reformat, or toluene, listed in Treas. Reg. §48.4081-1(c)
192 (3) that can be blended for use in a motor fuel. However,
193 the term does not include any substance that will be
194 ultimately used for consumer nonmotor fuel use and is sold
195 or removed in drum quantities of fifty-five gallons or less
196 at the time of the removal or sale.

197 (43) "Gross gallons" means the total measured product,
198 exclusive of any temperature or pressure adjustments,
199 considerations or deductions, in U. S. gallons.

200 (44) "Governmental entity" means this state or any
201 political subdivision thereof or the United States or its
202 commissioners, agencies and instrumentalities.

203 (45) "Heating oil" means any combustible liquid,
204 including, but not limited to, #1 fuel oil, #2 dyed fuel oil
205 and kerosene, that is burned in a boiler, furnace, or stove
206 for heating or for industrial processing purposes.

207 (46) "Highway" means every way or place of whatever
208 nature open to the use of the public for purposes of

209 vehicular travel in this state, including the streets and
210 alleys in towns and cities.

211 (47) "Highway vehicle" means any self-propelled
212 vehicle, trailer or semitrailer that is designed or used for
213 transporting persons or property over the public highway
214 and includes all vehicles subject to registration under
215 article three, chapter seventeen-a of this code.

216 (48) "Import" means to bring motor fuel into this state
217 by motor vehicle, marine vessel, pipeline, or any other
218 means. However, import does not include bringing motor
219 fuel into this state in the motor fuel supply tank of a motor
220 vehicle, if the motor fuel is used to power that motor
221 vehicle.

222 (49) "Importer" means a person that imports motor fuel
223 into this state. The seller is the importer for motor fuel
224 delivered into this state from outside of this state by or for
225 the seller and the purchaser is the importer for motor fuel
226 delivered into this state from outside of this state by or for
227 the purchaser.

228 (50) "Import verification number" means the number
229 assigned by the commissioner with respect to a single
230 transport vehicle delivery into this state from another
231 state upon request for an assigned number by an importer
232 or the transporter carrying taxable motor fuel into this
233 state for the account of an importer.

234 (51) "In this state" means the area within the borders of
235 West Virginia, including all territory within the borders of
236 West Virginia that is owned by the United States of
237 America.

238 (52) "Invoiced gallons" means the gallons actually billed
239 on an invoice for payment.

240 (53) "Licensee" means any person licensed by the
241 commissioner pursuant to section ten of this article.

242 (54) "Liquid" means any substance that is liquid above
243 its freezing point.

244 (55) "Liquefied natural gas" means natural gas that has
245 been liquefied at -126.1 degrees centigrade and stored in
246 insulated cryogenic tanks for use as an engine motor fuel.

247 (56) "Motor carrier" means any vehicle used, designated
248 or maintained for the transportation of persons or prop-
249 erty and having two axles and a gross vehicle weight
250 exceeding twenty-six thousand pounds or having three or
251 more axles regardless of weight or is used in combination
252 when the weight of the combination exceeds twenty-six
253 thousand pounds or registered gross vehicle weight, and
254 any aircraft, barge or other watercraft or railroad locomo-
255 tive transporting passengers or freight in or through this
256 state: *Provided*, That the gross vehicle weight rating of the
257 vehicles being towed is in excess of ten thousand pounds.
258 The term motor carrier does not include any type of
259 recreational vehicle.

260 (57) "Motor fuel" means gasoline, blended fuel, aviation
261 fuel and any special fuel.

262 (58) "Motor fuel transporter" means a person who
263 transports motor fuel outside the bulk transfer/terminal
264 system by means of a transport vehicle, a railroad tank
265 car, or a marine vessel.

266 (59) "Motor vehicle" means automobiles, motor carriers,
267 motor trucks, motorcycles and all other vehicles or equip-
268 ment, engines or machines which are operated or propelled
269 by combustion of motor fuel.

270 (60) "Net gallons" means the amount of motor fuel
271 measured in gallons when adjusted to a temperature of
272 sixty degrees fahrenheit and a pressure of fourteen and
273 seven-tenths pounds pressure per square inch.

274 (61) "Permissive supplier" is a person who may not be
275 subject to the taxing jurisdiction of this state, but who

276 meets both of the following requirements: (A) Is registered
277 under section 4101 of the Internal Revenue Code for
278 transactions in motor fuel in the bulk transfer/terminal
279 system; and (B) a position holder in motor fuel only located
280 in another state or a person who receives motor fuel only
281 in another state pursuant to a two-party exchange:
282 *Provided*, That a person is classified as a supplier if it has
283 or maintains, occupies or uses, within this state, directly or
284 by a subsidiary, an office, distribution house, sales house,
285 warehouse, or other place of business, or any agent (by
286 whatever name called) operating within this state under
287 the authority of the supplier or its subsidiary.

288 (62) "Person" means any individual; firm; cooperative;
289 association; corporation; limited liability corporation;
290 estate; guardian; executor; administrator; trust; business
291 trust; syndicate; partnership; limited partnership;
292 copartnership; organization; limited liability partnership;
293 joint venture; receiver; trustee in bankruptcy; club, society
294 or other group or combination acting as a unit; or public
295 body, including, but not limited to, this state, any other
296 state, and any agency, commissioner, institution, political
297 subdivision or instrumentality of this state or any other
298 state; and also any officer, employee or member of any of
299 the foregoing who, as an officer, employee or member, is
300 under a duty to perform or is responsible for the perfor-
301 mance of an act prescribed by the provisions of this article.

302 (63) "Position holder" means the person who holds the
303 inventory position in motor fuel in a terminal, as reflected
304 on the records of the terminal operator. A person holds
305 the inventory position in motor fuel when that person has
306 a contract with the terminal operator for the use of storage
307 facilities and terminaling services for motor fuel at the
308 terminal. The term includes a terminal operator who owns
309 motor fuel in the terminal.

310 (64) "Principal" means:

311 (A) If a partnership, all its partners;

312 (B) If a corporation, all its officers, directors, and
313 controlling direct or indirect owners;

314 (C) If a limited liability company, all its members; or

315 (D) An individual.

316 (65) "Rack" means a mechanism for delivering motor
317 fuel from a refinery, terminal, marine vessel or bulk plant
318 into a transport vehicle, railroad tank car or other means
319 of transfer that is outside the bulk transfer/terminal
320 system.

321 (66) "Railroad locomotive" means any diesel-powered
322 equipment or machinery that rides on railroad rails and
323 includes a switching engine.

324 (67) "Receive" means any acquisition of ownership or
325 possession of motor fuel.

326 (68) "Refiner" means any person who owns, operates or
327 otherwise controls a refinery.

328 (69) "Refinery" means a facility for the manufacture or
329 reprocessing of finished or unfinished petroleum products
330 usable as motor fuel and from which motor fuel may be
331 removed by pipeline or marine vessel or at a rack.

332 (70) "Removal" means a physical transfer other than by
333 evaporation, loss, or destruction. A physical transfer to a
334 transport vehicle or other means of conveyance outside the
335 bulk transfer/terminal system is complete upon delivery
336 into the means of conveyance.

337 (71) "Retailer" means a person who sells motor fuel at
338 retail or dispenses motor fuel at a retail location.

339 (72) "Special fuel" means any gas or liquid, other than
340 gasoline, used or suitable for use as motor fuel in an
341 internal combustion engine or motor to propel any form of
342 vehicle, machine, or mechanical contrivance and includes
343 products commonly known as natural or casing-head

344 gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel,
345 transmix and all forms of motor fuel commonly or com-
346 mercially known or sold as butane, propane, liquefied
347 natural gas, liquefied petroleum gas, compressed natural
348 gas product or a combination of liquefied petroleum gas
349 and a compressed natural gas product. "Special fuel" does
350 not include any petroleum product or chemical compound
351 such as alcohol, industrial solvent, heavy furnace oil or
352 lubricant, unless blended in or sold for use as motor fuel in
353 an internal combustion engine.

354 (73) "State" or "this state" means the State of West
355 Virginia.

356 (74) "Supplier" means a person that is:

357 (A) Subject to the general taxing jurisdiction of this
358 state;

359 (B) Registered under Section 4101 of the Internal
360 Revenue Code for transactions in motor fuel in the bulk
361 transfer/terminal distribution system; and

362 (C) One of the following:

363 (i) A position holder in motor fuel in a terminal or
364 refinery in this state and may concurrently also be a
365 position holder in motor fuel in another state; or

366 (ii) A person who receives motor fuel in this state
367 pursuant to a two-party exchange.

368 A terminal operator shall not be considered a supplier
369 based solely on the fact that the terminal operator handles
370 motor fuel consigned to it within a terminal.

371 (75) "Tax" or "this tax" is the motor fuel excise tax
372 imposed by this article and includes within its meaning
373 interest, additions to tax and penalties, unless the context
374 requires a more limited meaning.

375 (76) "Taxpayer" means any person required to file a
376 return for the tax imposed by this article or any person
377 liable for payment of the tax imposed by this article.

378 (77) "Terminal" means a motor fuel storage and distri-
379 bution facility to which a terminal control number has
380 been assigned by the Internal Revenue Service, to which
381 motor fuel is supplied by pipeline or marine vessel, and
382 from which motor fuel may be removed at a rack.

383 (78) "Terminal operator" means a person who owns,
384 operates or otherwise controls a terminal.

385 (79) "Transmix" means: (A) The buffer or interface
386 between two different products in a pipeline shipment; or
387 (B) a mix of two different products within a refinery or
388 terminal that results in an off-grade mixture.

389 (80) "Transport vehicle" means a vehicle designed or
390 used to carry motor fuel over the highway and includes a
391 straight truck, a straight truck/trailer combination and a
392 semitrailer combination rig.

393 (81) "Trustee" means a person who is licensed as a
394 supplier or a permissive supplier and receives tax pay-
395 ments from and on behalf of another pursuant to section
396 twenty-four of this article.

397 (82) "Two-party exchange" means a transaction in
398 which motor fuel is transferred from one licensed supplier
399 or permissive supplier to another licensed supplier or
400 permissive supplier pursuant to an exchange agreement;
401 and

402 (A) Includes a transfer from the person who holds the
403 inventory position in taxable motor fuel in the terminal as
404 reflected on the records of the terminal operator;

405 (B) Is completed prior to removal of the product from the
406 terminal by the receiving exchange partner; and

407 (C) Is recorded on the terminal operator's books and
408 records with the receiving exchange partner as the sup-
409 plier that removes the motor fuel across the terminal rack
410 for purposes of reporting the transaction to this state.

411 (83) "Use" means the actual consumption or receipt of
412 motor fuel by any person into a motor vehicle, aircraft or
413 watercraft.

414 (84) "Watercraft" means any vehicle used on waterways.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Crandy White
.....
Chairman Senate Committee

Bray
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Daniel Holcomb
.....
Clerk of the Senate

Bryan R. Burd
.....
Clerk of the House of Delegates

Cal Roy Tomblin
.....
President of the Senate

Robert S. Taylor
.....
Speaker House of Delegates

The within *is approved* this the *3rd*
Day of *April*, 2006.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 27 2006

Time 9:15am