SENATE BILL NO. 581

(By Senator Helmick)

PASSED March 9, 2006

In Effect 90 days from Passage
ENROLLED

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[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 otherwise, the following terms have the meaning ascribed herein.

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

(A) Cultivating the soil, including the planting and harvesting of crops, for the commercial production of food, fiber and ornamental woodland products;
(B) Using land for breeding and management of farm livestock, including dairy, apiary, equine or poultry husbandry; and

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

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

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

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

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

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

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

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

(9) "Biodiesel fuel" means any motor fuel or mixture of motor fuels that is derived, in whole or in part, from agricultural products or animal fats, or the wastes of such products or fats, and is advertised as, offered for sale as, suitable for use or used as motor fuel in an internal combustion engine.
(10) "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, including, but not limited to, gasoline blend stocks, gasohol, ethanol, methanol, fuel grade alcohol, diesel fuel enhancers and resulting blends, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a motor fuel in a highway vehicle.

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

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

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

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

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

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

(C) Book transfer of motor fuel within a terminal between licensed suppliers prior to completion of removal across the rack; and
(D) Two-party exchange between licensed suppliers or between licensed suppliers and permissive suppliers.

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

(16) "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. Motor fuel in a refinery, a pipeline, a terminal or a marine vessel transporting motor fuel to a refinery or terminal is in the bulk transfer/terminal system. Motor fuel in a motor fuel storage facility including, but not limited to, a bulk plant that is not part of a refinery or terminal, in the motor fuel supply tank of any engine or motor vehicle, in a marine vessel transporting motor fuel to a motor fuel storage facility that is not in the bulk transfer/terminal system, or in any tank car, rail car, trailer, truck or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

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

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

(19) "Commercial watercraft" means a watercraft employed in the business of commercial fishing, transporting persons or property for compensation or hire or any other trade or business.

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

(21) "Compressed natural gas" means natural gas that has been compressed and dispensed into motor fuel storage
containers and is advertised as, offered for sale as, suitable for use as, or used as an engine motor fuel.

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

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

(24) "Denaturants" means and includes gasoline, natural gasoline, gasoline components or toxic or noxious materials added to motor fuel grade ethanol to make it unsuitable for beverage use, but not unsuitable for automotive use.

(25) "Designated inspection site" means any state highway inspection station, weigh station, agricultural inspection station, mobile station or other location designated by the commissioner to be used as a motor fuel inspection site.

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

(27) "Diesel fuel" means any liquid that is advertised as, offered for sale as, sold for use as, suitable for use as or used as a motor fuel in a diesel-powered highway vehicle
or watercraft. The term includes #1 fuel oil, #2 fuel oil, undyed diesel fuel and kerosene, but shall not include gasoline or aviation fuel.

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

(29) "Diversion" means transporting motor fuel outside a reasonably direct route from the source to the destination state.

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

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

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

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

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

(35) "Fuel" means motor fuel.

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

(37) "Fuel grade ethanol" means the ASTM standard in effect on the effective date of this article as the D-4806 specification for denatured motor fuel grade ethanol for blending with gasoline.
(38) "Fuel supply tank" means any receptacle on a motor vehicle from which motor fuel is supplied for the propulsion of the motor vehicle.

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

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

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

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

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

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

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

(46) "Highway" means every way or place of whatever nature open to the use of the public for purposes of
vehicular travel in this state, including the streets and
alleys in towns and cities.

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

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

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

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

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

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

(53) "Licensee" means any person licensed by the
commissioner pursuant to section ten of this article.
(54) "Liquid" means any substance that is liquid above its freezing point.

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

(56) "Motor carrier" means any vehicle used, designated or maintained for the transportation of persons or property and having two axles and a gross vehicle weight exceeding twenty-six thousand pounds or having three or more axles regardless of weight or is used in combination when the weight of the combination exceeds twenty-six thousand pounds or registered gross vehicle weight, and any aircraft, barge or other watercraft or railroad locomotive transporting passengers or freight in or through this state: Provided, That the gross vehicle weight rating of the vehicles being towed is in excess of ten thousand pounds. The term motor carrier does not include any type of recreational vehicle.

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

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

(59) "Motor vehicle" means automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of motor fuel.

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

(61) "Permissive supplier" is a person who may not be subject to the taxing jurisdiction of this state, but who
meets both of the following requirements: (A) Is registered under section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal system; and (B) a position holder in motor fuel only located in another state or a person who receives motor fuel only in another state pursuant to a two-party exchange:

Provided, That a person is classified as a supplier if it has or maintains, occupies or uses, within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent (by whatever name called) operating within this state under the authority of the supplier or its subsidiary.

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

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

(64) "Principal" means:

(A) If a partnership, all its partners;
(B) If a corporation, all its officers, directors, and controlling direct or indirect owners;

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

(D) An individual.

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

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

(67) “Receive” means any acquisition of ownership or possession of motor fuel.

(68) “Refiner” means any person who owns, operates or otherwise controls a refinery.

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

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

(71) “Retailer” means a person who sells motor fuel at retail or dispenses motor fuel at a retail location.

(72) “Special fuel” means any gas or liquid, other than gasoline, used or suitable for use as motor fuel in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance and includes products commonly known as natural or casing-head
gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel, transmix and all forms of motor fuel commonly or commercially known or sold as butane, propane, liquefied natural gas, liquefied petroleum gas, compressed natural gas product or a combination of liquefied petroleum gas and a compressed natural gas product. "Special fuel" does not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil or lubricant, unless blended in or sold for use as motor fuel in an internal combustion engine.

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

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

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

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

(C) One of the following:

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

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

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

(75) "Tax" or "this tax" is the motor fuel excise tax imposed by this article and includes within its meaning interest, additions to tax and penalties, unless the context requires a more limited meaning.
(76) "Taxpayer" means any person required to file a return for the tax imposed by this article or any person liable for payment of the tax imposed by this article.

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

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

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

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

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

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

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

(B) Is completed prior to removal of the product from the terminal by the receiving exchange partner; and
(C) Is recorded on the terminal operator's books and records with the receiving exchange partner as the supplier that removes the motor fuel across the terminal rack for purposes of reporting the transaction to this state.

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

(84) "Watercraft" means any vehicle used on waterways.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor