

HB 2955
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2007 APR -3 PM 4: 26

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2007



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 2955

(By Delegates Caputo, Manchin, Klempa,
Paxton, Shook and Marshall)



Passed March 10, 2007

In Effect Ninety Days from Passage

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FOR

H. B. 2955

(BY DELEGATES CAPUTO, MANCHIN, KLEMPA,
PAXTON, SHOOK AND MARSHALL)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §11-14C-5 and §11-14C-47 of the Code of West Virginia, 1931, as amended, all relating to the motor fuel excise tax generally; extending the date to which the rate of the flat-rate component of the motor fuel excise tax will remain at twenty and one-half cents per invoiced gallon; and requiring the Commissioner of Highways to report to the Joint Committee on Government and Finance or its designated subcommittee on the amount of tax paid into the state road fund, any matching federal funds, and all expenditures therefrom.

Be it enacted by the Legislature of West Virginia:

That §11-14C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-14C-47 of said code be amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

PART 2. MOTOR FUEL TAX; LIABILITY.

§11-14C-5. Taxes levied; rate.

1 (a) There is hereby levied on all motor fuel an excise tax
2 composed of a flat rate equal to twenty and one-half cents per
3 invoiced gallon plus a variable component comprised of
4 either the tax imposed by section eighteen-b, article fifteen of
5 this chapter or the tax imposed under section thirteen-a,
6 article fifteen-a of this chapter, as applicable: *Provided*, That
7 the motor fuel excise tax shall take effect the first day of
8 January, two thousand four: *Provided, however*, That on and
9 after the first day of August, two thousand thirteen, the flat
10 rate portion of the motor fuel excise tax shall be fifteen and
11 one-half cents per gallon: *Provided further*, That the variable
12 component shall be equal to five percent of the average
13 wholesale price of the motor fuel: *And provided further*, That
14 the average wholesale price shall be no less than ninety-seven
15 cents per invoiced gallon and is computed as hereinafter
16 prescribed in this section.

17 (b) *Determination of average wholesale price. --*

18 (1) To simplify determining the average wholesale price
19 of all motor fuel, the Tax Commissioner shall, effective with
20 the period beginning the first day of the month of the
21 effective date of the tax and each first day of January
22 thereafter, determine the average wholesale price of motor
23 fuel for each annual period on the basis of sales data gathered
24 for the preceding period of the first day of July through the
25 thirty-first day of October. Notification of the average
26 wholesale price of motor fuel shall be given by the Tax
27 Commissioner at least thirty days in advance of each first day
28 of January by filing notice of the average wholesale price in
29 the state register, and by any other means as the Tax
30 Commissioner considers reasonable.

31 (2) The “average wholesale price” means the single,
32 statewide average per gallon wholesale price, rounded to the
33 third decimal (thousandth of a cent), exclusive of state and
34 federal excise taxes on each gallon of motor fuel, as
35 determined by the Tax Commissioner from information
36 furnished by suppliers, importers and distributors of motor

37 fuel in this state, or other information regarding wholesale
38 selling prices as the Tax Commissioner may gather, or a
39 combination of information: *Provided*, That in no event shall
40 the average wholesale price be determined to be less than
41 ninety-seven cents per gallon of motor fuel.

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

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

55 (c) There is hereby levied a floorstocks tax on motor fuel
56 held in storage outside the bulk transfer/terminal system as of
57 the close of the business day preceding the first day of
58 January, two thousand four, and upon which the tax levied by
59 this section has not been paid. For the purposes of this
60 section, "close of the business day" means the time at which
61 the last transaction has occurred for that day. The floorstocks
62 tax is payable by the person in possession of the motor fuel
63 on the first day of January, two thousand four. The amount
64 of the floorstocks tax on motor fuel is equal to the sum of the
65 tax rate specified in subsection (a) of this section multiplied
66 by the gallons in storage as of the close of the business day
67 preceding the first day of January, two thousand four.

68
69 (1) Persons in possession of taxable motor fuel in storage
70 outside the bulk transfer/terminal system as of the close of
71 the business day preceding the first day of January, two
72 thousand four, shall:

73 (A) Take an inventory at the close of the business day

74 preceding the first day of January, two thousand four, to
75 determine the gallons in storage for purposes of determining
76 the floorstocks tax;

77 (B) Report no later than the thirty-first day of January,
78 two thousand four, the gallons on forms provided by the
79 commissioner; and

80 (C) Remit the tax levied under this section no later than
81 the first day of June, two thousand four.

82 (2) In the event the tax due is paid to the commissioner
83 on or before the thirty-first day of January, two thousand
84 four, the person remitting the tax may deduct from their
85 remittance five percent of the tax liability due.

86 (3) In the event the tax due is paid to the commissioner
87 after the first day of June, two thousand four, the person
88 remitting the tax shall pay, in addition to the tax, a penalty in
89 the amount of five percent of the tax liability due.

90 (4) In determining the amount of floorstocks tax due
91 under this section, the amount of motor fuel in dead storage
92 may be excluded. There are two methods for calculating the
93 amount of motor fuel in dead storage:

94 (A) If the tank has a capacity of less than ten thousand
95 gallons, the amount of motor fuel in dead storage is two
96 hundred gallons and if the tank has a capacity of ten thousand
97 gallons or more, the amount of motor fuel in dead storage is
98 four hundred gallons; or

99 (B) Use the manufacturer's conversion table for the tank
100 after measuring the number of inches between the bottom of
101 the tank and the bottom of the mouth of the drainpipe:
102 *Provided*, That the distance between the bottom of the tank
103 and the bottom of the mouth of the draw pipe is presumed to
104 be six inches.

105 (d) Every licensee who, on the effective date of any rate
106 change, has in inventory any motor fuel upon which the tax

107 or any portion thereof has been previously paid shall take a
108 physical inventory and file a report thereof with the
109 commissioner, in the format as required by the commissioner,
110 within thirty days after the effective date of the rate change,
111 and shall pay to the commissioner at the time of filing the
112 report any additional tax due under the increased rate.

**§11-14C-47. Disposition of tax collected; dedicated receipts;
reports.**

1 (a) There is hereby created and established in the state
2 treasury a special revolving fund to be known and designated
3 as the “Motor Fuel General Tax Administration Fund.” The
4 commissioner is authorized to retain one half of one percent
5 of the tax collected pursuant to the provisions of this article:
6 *Provided*, That in any fiscal year in which the tax collected
7 pursuant to the provisions of this article exceed three hundred
8 million dollars, the commissioner is authorized to retain an
9 additional one percent of the tax in excess of the three
10 hundred million dollars that is collected. The amounts
11 retained by the commissioner under this subsection shall be
12 deposited in the motor fuel general tax administration fund
13 and may be expended for the general administration of taxes
14 imposed by this chapter.

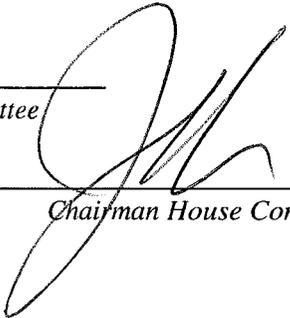
15 (b) All remaining tax collected under the provisions of
16 this article after deducting the amount of any refunds
17 lawfully paid shall be paid into the state road fund and used
18 only for the purpose of construction, reconstruction,
19 maintenance and repair of highways, matching of federal
20 moneys available for highway purposes and payment of the
21 interest and sinking fund obligations on state bonds issued for
22 highway purposes.

23 (c) Not less than monthly, beginning the first day of July,
24 two thousand seven, the Commissioner of Highways shall
25 report to the Joint Committee on Government and Finance or
26 its designated subcommittee on the amount of tax paid into
27 the state road fund under subsection (b) of this section, any
28 matching federal funds, and all expenditures therefrom.

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



Chairman Senate Committee



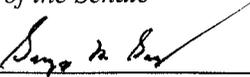
Chairman House Committee

Originating in the House.

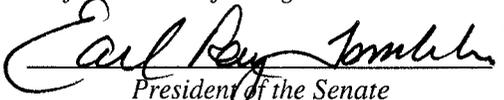
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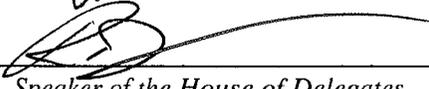
Clerk of the Senate



Clerk of the House of Delegates

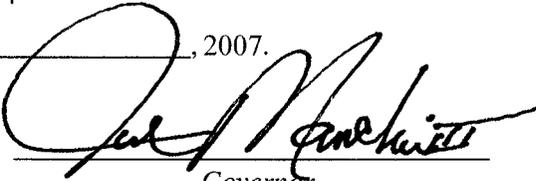


President of the Senate



Speaker of the House of Delegates

The within is approved this the 3rd
day of April, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 26 2007

Time

4:00 pm