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
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.

(a) There is hereby levied on all motor fuel an excise tax composed of a flat rate equal to twenty and one-half cents per invoiced gallon plus a variable component comprised of 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: Provided, That the motor fuel excise tax shall take effect the first day of January, two thousand four: Provided, however, That on and after the first day of August, two thousand thirteen, the flat rate portion of the motor fuel excise tax shall be fifteen and one-half cents per gallon: Provided further, That the variable component shall be equal to five percent of the average wholesale price of the motor fuel: And provided further, That the average wholesale price shall be no less than ninety-seven cents per invoiced gallon and is computed as hereinafter prescribed in this section.

(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 first day of January 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 the first day of July through the thirty-first day of October. Notification of the average wholesale price of motor fuel shall be given by the Tax Commissioner at least thirty days in advance of each first day of January by filing notice of the average wholesale price in the state register, and by any 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, as determined by the Tax Commissioner from information furnished by suppliers, importers and distributors of motor
fuel in this state, or other information regarding wholesale selling prices as the Tax Commissioner may gather, or a combination of information: Provided, That in no event shall the average wholesale price be determined to be less than ninety-seven cents per gallon of motor 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 any 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 any 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) There is hereby levied a floorstocks tax on motor fuel held in storage outside the bulk transfer/terminal system as of the close of the business day preceding the first day of January, two thousand four, and upon which the tax levied by this section has not been paid. For the purposes of this section, “close of the business day” means the time at which the last transaction has occurred for that day. The floorstocks tax is payable by the person in possession of the motor fuel on the first day of January, two thousand four. The amount of the floorstocks tax on motor fuel is equal to the sum of the tax rate specified in subsection (a) of this section multiplied by the gallons in storage as of the close of the business day preceding the first day of January, two thousand four.

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

(A) Take an inventory at the close of the business day
(B) Report no later than the thirty-first day of January, two thousand four, the gallons on forms provided by the commissioner; and

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

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

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

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

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

(B) Use the manufacturer’s conversion table for the tank after measuring the number of inches between the bottom of the tank and the bottom of the mouth of the drainpipe: Provided, That the distance between the bottom of the tank and the bottom of the mouth of the draw pipe is presumed to be six inches.

(d) 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.

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

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

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

(c) Not less than monthly, beginning the first day of July,
two thousand seven, the Commissioner of Highways shall
report to the Joint Committee on Government and Finance or
its designated subcommittee on the amount of tax paid into
the state road fund under subsection (b) of this section, any
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.

In effect ninety days from passage.

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