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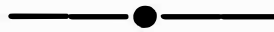
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OFFICE OF THE  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

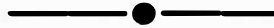
SECOND EXTRAORDINARY SESSION, 2008



# ENROLLED

## House Bill No. 218

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]



Passed June 25, 2008

In Effect from Passage

**ENROLLED** FILE

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## **H. B. 218**

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(BY MR. SPEAKER, MR. THOMPSON AND DELEGATE ARMSTEAD)  
[BY REQUEST OF THE EXECUTIVE]

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[Passed June 25, 2008; in effect from passage.]

AN ACT to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-14C-48, all relating to establishing the average wholesale price of motor fuel for the two thousand nine calendar year for purposes of calculating the rate of Motor Fuel Excise Tax; creating the Motor Fuel Excise Tax Shortfall Reserve Fund; providing for the transfer of moneys from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund; providing for the termination of the reserve fund; and requiring the Commissioner of Highways to submit reports to the Joint Committee on Government and Finance.

*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 said code be amended by adding thereto a new section, designated §11-14C-48, all to read as follows:

**ARTICLE 14C. MOTOR FUEL EXCISE TAX.**

**§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*,  
14      That the average wholesale price shall be no less than ninety-  
15      seven cents per invoiced gallon and is computed as  
16      hereinafter 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: *Provided*,  
42 *however*, That for calendar year two thousand nine, the  
43 average wholesale price of motor fuel shall not exceed the  
44 average wholesale price of motor fuel for calendar year two  
45 thousand eight as determined pursuant to the notice filed by  
46 the Tax Commissioner with the Secretary of State on the  
47 twenty-first day of November, two thousand seven and  
48 published in the state register on the thirtieth day of  
49 November, two thousand seven.

50       (3) All actions of the Tax Commissioner in acquiring data  
51 necessary to establish and determine the average wholesale  
52 price of motor fuel, in providing notification of his or her  
53 determination prior to the effective date of any change in  
54 rate, and in establishing and determining the average  
55 wholesale price of motor fuel, may be made by the Tax  
56 Commissioner without compliance with the provisions of  
57 article three, chapter twenty-nine-a of this code.

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

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

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

80       (A) Take an inventory at the close of the business day  
81 preceding the first day of January, two thousand four, to  
82 determine the gallons in storage for purposes of determining  
83 the floorstocks tax;

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

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

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

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

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

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

106       (B) Use the manufacturer's conversion table for the tank  
107 after measuring the number of inches between the bottom of  
108 the tank and the bottom of the mouth of the drainpipe:  
109 *Provided*, That the distance between the bottom of the tank  
110 and the bottom of the mouth of the draw pipe is presumed to  
111 be six inches.

112       (d) Every licensee who, on the effective date of any rate  
113 change, has in inventory any motor fuel upon which the tax  
114 or any portion thereof has been previously paid shall take a  
115 physical inventory and file a report thereof with the  
116 commissioner, in the format as required by the commissioner,  
117 within thirty days after the effective date of the rate change,  
118 and shall pay to the commissioner at the time of filing the  
119 report any additional tax due under the increased rate.

**§11-14C-48. Motor Fuel Excise Tax Shortfall State Road Fund  
support payment.**

1       (a) There is hereby created in the State Treasury a special  
2 fund to be known and designated as the "Motor Fuel Excise  
3 Tax Shortfall Reserve Fund" to be administered by the Tax  
4 Commissioner for the purposes provided by this section. The  
5 fund shall consist of moneys transferred to the general  
6 revenue fund pursuant to appropriation of the Legislature. At  
7 the end of each fiscal year, during the fund's existence, the  
8 moneys in the fund shall not expire to the general fund, but  
9 shall remain available for expenditure during the ensuing  
10 fiscal year. The fund shall terminate on the first day of  
11 February, two thousand ten. Any moneys remaining in the  
12 fund on that termination date shall be transferred to the  
13 general revenue fund. No provision of this section may be  
14 construed to require funding for the purposes of this section  
15 in excess of amounts transferred to the fund pursuant to  
16 appropriation of the Legislature.

17       (b) *Determination of motor fuel excise tax revenue*  
18 *shortfall for the fiscal year ending the thirtieth day of June,*  
19 *two thousand eight. --*

20       (1) *Shortfall for the fiscal year ending the thirtieth day of*  
21 *June, two thousand eight. --* On the thirtieth day of June, two  
22 thousand eight, or as soon thereafter as is practicable, the Tax  
23 Commissioner shall determine the amount of the annual  
24 motor fuel excise tax revenue shortfall that occurred for the  
25 fiscal year ending on the thirtieth day of June, two thousand  
26 eight.

27       (2) *Transfer for annual shortfall for the fiscal year*  
28 *ending the thirtieth day of June, two thousand eight. --* On or  
29 before the first day of August, two thousand eight, the Tax  
30 Commissioner shall transfer moneys equal to the lesser of  
31 twenty million dollars or the amount of the motor fuel excise  
32 tax revenue shortfall that occurred for the fiscal year ending  
33 on the thirtieth day of June, two thousand eight from the

34 Motor Fuel Excise Tax Shortfall Reserve Fund to the State  
35 Road Fund.

36 (c) *Monthly shortfalls for the period of July, two*  
37 *thousandeight to December, two thousand nine.* -- Beginning  
38 on the thirty-first day of July, two thousand eight and on the  
39 last day of each month thereafter until, and including, the  
40 thirty-first day of December, two thousand nine, or as soon  
41 after the last day of each month as is practicable, the Tax  
42 Commissioner shall determine the amount of the monthly  
43 motor fuel excise tax revenue shortfall that occurred for each  
44 month. No such determination shall be made for any month  
45 ending after the thirty-first day of December, two thousand  
46 nine.

47 (1) *Transfer for monthly shortfall.* — Within thirty days  
48 after making the determination of the monthly motor fuel  
49 excise tax revenue shortfall that occurred for each month, the  
50 Tax Commissioner shall transfer moneys in an amount equal  
51 to the amount of the motor fuel excise tax revenue shortfall  
52 that occurred for each month from the Motor Fuel Excise Tax  
53 Shortfall Reserve Fund to the State Road Fund: *Provided,*  
54 *That the total amount of moneys transferred from the Motor*  
55 *Fuel Excise Tax Shortfall Reserve Fund to the State Road*  
56 *Fund in the fiscal year ending on the thirtieth day of June,*  
57 *two thousand nine through total aggregate monthly transfers*  
58 *shall not exceed the lesser of twenty million dollars or the*  
59 *balance remaining in the Motor Fuel Excise Tax Shortfall*  
60 *Reserve Fund. No such transfer shall be made that is*  
61 *attributable to any month beginning after the thirty-first day*  
62 *of December, two thousand nine: Provided, however, That*  
63 *transfers attributable to the reconciliation for the period*  
64 *beginning the first day of July, two thousand nine to the*  
65 *thirty-first day of December, two thousand nine mandated by*  
66 *paragraph (3) of this subsection shall be made, if required.*



67       (2) *Annual reconciliation.* — On the thirtieth day of June,  
68 two thousand nine, or as soon thereafter as is practicable, the  
69 Tax Commissioner shall determine the amount of the annual  
70 motor fuel excise tax revenue shortfall that occurred for the  
71 fiscal year ending on the thirtieth day of June, two thousand  
72 nine.

73       (A) *Transfer for annual reconciliation for the fiscal year*  
74 *ending on the thirtieth day of June, two thousand nine.* — The  
75 amount of the annual motor fuel excise tax revenue shortfall  
76 that occurred for the fiscal year ending on the thirtieth day of  
77 June, two thousand nine shall be compared to the total  
78 amount of moneys transferred from the Motor Fuel Excise  
79 Tax Shortfall Reserve Fund to the State Road Fund over the  
80 same fiscal year through total aggregate monthly transfers.  
81 The resulting difference is the reconciliation amount.

82       (B) *Net Shortfall.* -- If the total amount of moneys  
83 transferred from the Motor Fuel Excise Tax Shortfall Reserve  
84 Fund to the State Road Fund for the fiscal year ending on the  
85 thirtieth day of June, two thousand nine through total  
86 aggregate monthly transfers is less than the amount of the  
87 annual motor fuel excise tax revenue shortfall that occurred  
88 over the same fiscal year, then on or before the first day of  
89 August, two thousand nine, an amount of money equal to the  
90 reconciliation amount shall be transferred by the Tax  
91 Commissioner from the Motor Fuel Excise Tax Shortfall  
92 Reserve Fund to the State Road Fund: *Provided, That the*  
93 *sum of the reconciliation amount subject to transfer and the*  
94 *total amount of moneys transferred from the Motor Fuel*  
95 *Excise Tax Shortfall Reserve Fund to the State Road Fund in*  
96 *the fiscal year ending on the thirtieth day of June, two*  
97 *thousand nine through total aggregate monthly transfers shall*  
98 *not exceed the lesser of twenty million dollars or the amount*  
99 *remaining in the Motor Fuel Excise Tax Shortfall Reserve*  
100 *Fund.*

101 (C) *Net Overage.* -- If the total amount of moneys  
102 transferred from the Motor Fuel Excise Tax Shortfall Reserve  
103 Fund to the State Road Fund for the fiscal year ending on the  
104 thirtieth day of June, two thousand nine through total  
105 aggregate monthly transfers is greater than the amount of the  
106 annual motor fuel excise tax revenue shortfall that occurred  
107 over the same annual period, then moneys equal to the  
108 reconciliation amount shall be offset against amounts that  
109 would have otherwise been transferred by the Tax  
110 Commissioner from the Motor Fuel Excise Tax Shortfall  
111 Reserve Fund to the State Road Fund under this section in the  
112 next succeeding fiscal year beginning on the first day of July,  
113 two thousand nine, and moneys transferred in the fiscal year  
114 beginning on the first day of July, two thousand nine  
115 accordingly decrease.

116 (3) *Transfer for reconciliation for the period beginning*  
117 *the first day of July, two thousand nine to the thirty-first day*  
118 *of December, two thousand nine.* — The amount of the  
119 annual motor fuel excise tax revenue shortfall that occurred  
120 for the period beginning on the first day of July, two  
121 thousand nine through the thirty-first day of December, two  
122 thousand nine shall be compared to the total amount of  
123 moneys transferred from the Motor Fuel Excise Tax Shortfall  
124 Reserve Fund to the State Road Fund over the same period  
125 through total aggregate monthly transfers. The resulting  
126 difference is the reconciliation amount for the period  
127 beginning the first day of July, two thousand nine to the  
128 thirty-first day of December, two thousand nine.

129 (A) *Net Shortfall.* -- If the total amount of moneys  
130 transferred from the Motor Fuel Excise Tax Shortfall Reserve  
131 Fund to the State Road Fund for the period beginning on the  
132 first day of July, two thousand nine through the thirty-first  
133 day of December, two thousand nine through total aggregate  
134 monthly transfers is less than the amount of the motor fuel

135 excise tax revenue shortfall that occurred over the same  
136 period, then on or before the first day of February, two  
137 thousand ten, moneys equal to the reconciliation amount for  
138 the period beginning the first day of July, two thousand nine  
139 to the thirty-first day of December, two thousand nine shall  
140 be transferred by the Tax Commissioner from the Motor Fuel  
141 Excise Tax Shortfall Reserve Fund to the State Road Fund:  
142 *Provided*, That the sum of the reconciliation amount subject  
143 to transfer and the total amount of moneys transferred from  
144 the Motor Fuel Excise Tax Shortfall Reserve Fund to the  
145 State Road Fund in the period beginning on the first day of  
146 July, two thousand nine through the thirty-first day of  
147 December, two thousand nine through total aggregate  
148 monthly transfers shall not exceed the lesser of twenty  
149 million dollars or the amount remaining in the Motor Fuel  
150 Excise Tax Shortfall Reserve Fund.

151 (B) *Net Overage*. -- If the total amount of moneys  
152 transferred from the Motor Fuel Excise Tax Shortfall Reserve  
153 Fund to the State Road Fund for the period beginning on the  
154 first day of July, two thousand nine through the thirty-first  
155 day of December, two thousand nine through total aggregate  
156 monthly transfers is greater than the amount of the annual  
157 motor fuel excise tax revenue shortfall that occurred over the  
158 same period, then moneys equal to the reconciliation amount  
159 for the period beginning the first day of July, two thousand  
160 nine to the thirty-first day of December, two thousand nine  
161 shall remain in the State Road Fund for expenditure as  
162 provided by law.

163 (d) *Definitions*. --

164 (1) "Calendar year" means the year beginning on the first  
165 day of January, and ending on the thirty-first day of  
166 December.

167       (2) "Motor fuel excise tax revenue shortfall" means the  
168 official West Virginia state revenue estimate for motor fuel  
169 excise tax revenues for a designated period minus the amount  
170 of motor fuel excise tax collected for the same period:  
171 *Provided*, That if the motor fuel excise tax collected for the  
172 designated period is greater than the official West Virginia  
173 state revenue estimate for motor fuel excise tax revenues for  
174 the same period, the motor fuel excise tax revenue shortfall  
175 is zero for the period.

176       (e) *Reporting.* — The Commissioner of Highways shall  
177 submit a report to the Joint Committee on Government and  
178 Finance not later than the last day of each month for the  
179 period of July, two thousand eight through December, two  
180 thousand nine providing an analysis of the financial status of  
181 the State Road Fund and funds for highway maintenance.

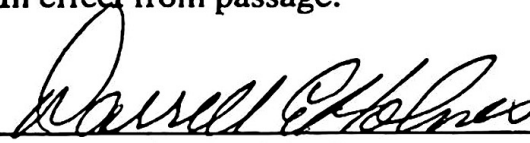
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

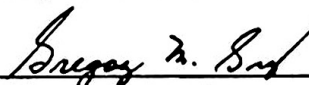
  
Chairman Senate Committee

  
Chairman House Committee

Originating in the House.

In effect 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 9th  
day of July, 2008.

  
Governor

PRESENTED TO THE  
GOVERNOR

JUN 28 2008

Time 1:59 pm