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
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.

(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: Provided, however, That for calendar year two thousand nine, the average wholesale price of motor fuel shall not exceed the average wholesale price of motor fuel for calendar year two thousand eight as determined pursuant to the notice filed by the Tax Commissioner with the Secretary of State on the twenty-first day of November, two thousand seven and published in the state register on the thirtieth day of November, two thousand seven.

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

(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.

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

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

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

(2) Transfer for annual shortfall for the fiscal year ending the thirtieth day of June, two thousand eight. — On or before the first day of August, two thousand eight, the Tax Commissioner shall transfer moneys equal to the lesser of twenty million dollars or the amount of the motor fuel excise tax revenue shortfall that occurred for the fiscal year ending on the thirtieth day of June, two thousand eight from the
Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund.

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

(1) Transfer for monthly shortfall. — Within thirty days after making the determination of the monthly motor fuel excise tax revenue shortfall that occurred for each month, the Tax Commissioner shall transfer moneys in an amount equal to the amount of the motor fuel excise tax revenue shortfall that occurred for each month from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund: Provided, that the total amount of moneys transferred from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund in the fiscal year ending on the thirtieth day of June, two thousand nine through total aggregate monthly transfers shall not exceed the lesser of twenty million dollars or the balance remaining in the Motor Fuel Excise Tax Shortfall Reserve Fund. No such transfer shall be made that is attributable to any month beginning after the thirty-first day of December, two thousand nine: Provided, however, That transfers attributable to the reconciliation for the period beginning the first day of July, two thousand nine to the thirty-first day of December, two thousand nine mandated by paragraph (3) of this subsection shall be made, if required.
(2) *Annual reconciliation.* — On the thirtieth day of June, two thousand nine, or as soon thereafter as is practicable, the Tax Commissioner shall determine the amount of the annual motor fuel excise tax revenue shortfall that occurred for the fiscal year ending on the thirtieth day of June, two thousand nine.

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

(B) *Net Shortfall.* — If the total amount of moneys transferred from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund for the fiscal year ending on the thirtieth day of June, two thousand nine through total aggregate monthly transfers is less than the amount of the annual motor fuel excise tax revenue shortfall that occurred over the same fiscal year, then on or before the first day of August, two thousand nine, an amount of money equal to the reconciliation amount shall be transferred by the Tax Commissioner from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund: *Provided,* That the sum of the reconciliation amount subject to transfer and the total amount of moneys transferred from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund in the fiscal year ending on the thirtieth day of June, two thousand nine through total aggregate monthly transfers shall not exceed the lesser of twenty million dollars or the amount remaining in the Motor Fuel Excise Tax Shortfall Reserve Fund.
(C) Net Overage. -- If the total amount of moneys transferred from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund for the fiscal year ending on the thirtieth day of June, two thousand nine through total aggregate monthly transfers is greater than the amount of the annual motor fuel excise tax revenue shortfall that occurred over the same annual period, then moneys equal to the reconciliation amount shall be offset against amounts that would have otherwise been transferred by the Tax Commissioner from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund under this section in the next succeeding fiscal year beginning on the first day of July, two thousand nine, and moneys transferred in the fiscal year beginning on the first day of July, two thousand nine accordingly decrease.

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

(A) Net Shortfall. -- If the total amount of moneys transferred from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund for the period beginning on the first day of July, two thousand nine through the thirty-first day of December, two thousand nine through total aggregate monthly transfers is less than the amount of the motor fuel
excise tax revenue shortfall that occurred over the same period, then on or before the first day of February, two thousand ten, moneys equal to the reconciliation amount for the period beginning the first day of July, two thousand nine to the thirty-first day of December, two thousand nine shall be transferred by the Tax Commissioner from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund: Provided, That the sum of the reconciliation amount subject to transfer and the total amount of moneys transferred from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund in the period beginning on the first day of July, two thousand nine through the thirty-first day of December, two thousand nine through total aggregate monthly transfers shall not exceed the lesser of twenty million dollars or the amount remaining in the Motor Fuel Excise Tax Shortfall Reserve Fund.

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

(d) Definitions. --

(1) “Calendar year” means the year beginning on the first day of January, and ending on the thirty-first day of December.
(2) "Motor fuel excise tax revenue shortfall" means the official West Virginia state revenue estimate for motor fuel excise tax revenues for a designated period minus the amount of motor fuel excise tax collected for the same period:

Provided, That if the motor fuel excise tax collected for the designated period is greater than the official West Virginia state revenue estimate for motor fuel excise tax revenues for the same period, the motor fuel excise tax revenue shortfall is zero for the period.

(e) Reporting. — The Commissioner of Highways shall submit a report to the Joint Committee on Government and Finance not later than the last day of each month for the period of July, two thousand eight through December, two thousand nine providing an analysis of the financial status of 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 day of July, 2008.

Governor