WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
FOURTH EXTRAORDINARY SESSION, 2009

ENROLLED

Senate Bill No. 4004
(By Senators Tomblin (Mr. President)
and Caruth, By Request of the Executive)

[Passed November 20, 2009; in effect from passage.]
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(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH, BY REQUEST OF THE EXECUTIVE)

[Passed November 20, 2009; in effect from passage.]

AN ACT to amend and reenact §11-14C-5 and §11-14C-48 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15-18b of said code, all relating to adjusting the minimum values for computations relating to the flat rate and variable rate of the motor fuel excise tax; increasing the annual minimum average wholesale price of motor fuel computation; establishing variable restrictions on the average wholesale price of motor fuel computation; terminating the Motor Fuel Excise Tax Shortfall Reserve Fund; and transferring all moneys remaining in the fund to the State Road Fund for the purpose of reconstructing, renovating, maintaining or repairing secondary roads.

Be it enacted by the Legislature of West Virginia:

That §11-14C-5 and §11-14C-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-15-18b of said code be amended and reenacted, 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 $.205 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 January 1, 2004: Provided, however, That the variable component shall be equal to five percent of the average wholesale price of the motor fuel: Provided further, That the average wholesale price shall be no less than $.97 per invoiced gallon and is computed as hereinafter prescribed in this section: And provided further, That on and after January 1, 2010, the average wholesale price shall be no less than $2.34 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 January 1 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 July 1 through October 31. Notification of the average wholesale price of motor fuel shall be given by the Tax Commissioner at least thirty days in advance of each January 1 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 $.97 per gallon of motor fuel: Provided, however, That for calendar year 2009, the average wholesale price of motor fuel shall not exceed the average wholesale price of motor fuel for calendar year 2008 as determined pursuant to the notice filed by the Tax Commissioner with the Secretary of State on November 21, 2007, and published in the State Register on November 30, 2007: Provided further, That on and after January 1, 2010, in no event shall the average wholesale price be determined to be less than $2.34 per gallon of motor fuel: And provided further, That on and after January 1, 2011, the average wholesale price shall not vary by more than ten percent from the average wholesale price of motor fuel as determined by the Tax Commissioner for the previous calendar year.

(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 January 1, 2004, 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 January 1, 2004. 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 January 1, 2004.

(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 January 1, 2004, shall:

(A) Take an inventory at the close of the business day preceding January 1, 2004, to determine the gallons in storage for purposes of determining the floorstocks tax;

(B) Report no later than January 31, 2004, the gallons on forms provided by the commissioner; and

(C) Remit the tax levied under this section no later than June 1, 2004.

(2) In the event the tax due is paid to the commissioner on or before January 31, 2004, 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 June 1, 2004, 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.


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 termi-
nate on December 1, 2009. Any moneys remaining in the fund on that termination date shall be transferred to the State Road Fund and used only for the purpose of reconstruction, renovation, maintenance and repair of secondary roads.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


(a) General. — Effective January 1, 2004, all sales of motor fuel subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter are subject to the tax imposed by this article which shall comprise the variable component of the tax imposed by said section and be collected and remitted at the time the tax imposed by said section is remitted. Sales of motor fuel upon which the tax imposed by this article has been paid shall not thereafter be again taxed under the provisions of this article. This section is construed so that all gallons of motor fuel sold and delivered, or delivered, in this state are taxed one time.

(b) Measure of tax. — The measure of tax imposed by this article on sales of motor fuel is the average wholesale price as defined and determined in section five, article fourteen-c of this chapter. For purposes of maintaining revenue for highways, and recognizing that the tax imposed by this article is generally imposed on gross proceeds from sales to ultimate consumers, whereas the tax on motor fuel herein is imposed on the average wholesale price of the motor fuel; in no case, for the purposes of taxation under this article, shall the average wholesale price be determined to be less than $.97 per gallon of motor fuel for all gallons of motor fuel sold during the reporting period, notwithstanding any provision of this article to the contrary: Provided, That on and after January 1, 2010, for the purpose of taxation under this
article, in no case shall the average wholesale price be
determined to be less than $2.34 per gallon of motor fuel
for all gallons of motor fuel sold during the reporting
period, notwithstanding any provision of this article to the
contrary.

(c) Definitions. — For purposes of this article, the terms
"gasoline" and "special fuel" are defined as provided in
section two, article fourteen-c of this chapter. Other terms
used in this section have the same meaning as when used
in a similar context in said article.

(d) Tax return and tax due. — The tax imposed by this
article on sales of motor fuel shall be paid by each tax-
payer on or before the last day of the calendar month by
check, bank draft, certified check or money order payable
to the Tax Commissioner for the amount of tax due for the
preceding month, notwithstanding any provision of this
article to the contrary: Provided, That the commissioner
may require all or certain taxpayers to file tax returns and
payments electronically. The return required by the
commissioner shall accompany the payment of tax:
Provided, however, That if no tax is due, the return
required by the commissioner shall be completed and filed
on or before the last day of the month.

(e) Compliance. — To facilitate ease of administration
and compliance by taxpayers, the Tax Commissioner shall
require persons liable for the tax imposed by this article
on sales of motor fuel to file a combined return and make
a combined payment of the tax due under this article on
sales of motor fuel and the tax due under article four-
teen-c of this chapter on motor fuel. In order to encourage
use of a combined return each month and the making of a
single payment each month for both taxes, the due date of
the return and tax due under said article is the last day of
each month, notwithstanding any provision in said article
to the contrary.
(f) **Dedication of tax.** — All tax collected under the provisions of this section, after deducting the amount of any refunds lawfully paid, shall be deposited in the Road Fund in the State Treasurer's office and used only for the purpose of construction, reconstruction, maintenance and repair of highways and payment of principal and interest on state bonds issued for highway purposes: Provided, That notwithstanding any provision to the contrary, any tax collected on the sale of aviation fuel after deducting the amount of any refunds lawfully paid shall be deposited in the State Treasurer's office and transferred to the State Aeronautical Commission to be used for the purpose of matching federal funds available for the reconstruction, maintenance and repair of public airports and airport runways.

(g) **Construction.** — This section is not construed as taxing any sale of motor fuel which this state is prohibited from taxing under the constitution of this state or the constitution or laws of the United States.

(h) **Effective date.** — The provisions of this section take effect on January 1, 2004. The provisions of this section enacted during the 2007 legislative session take effect on January 1, 2008.
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 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 __________________ Day of ___________________ 2009.

Governor