WEST VIRGINIA LEGISLATURE
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ENROLLED
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 454
(Senators Prezioso and Facemire, original sponsors)
[Passed April 13, 2013; in effect ninety days from passage.]
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AN ACT to amend and reenact §11-14C-2, §11-14C-5, §11-14C-9, §11-14C-10, §11-14C-13 and §11-14C-19 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-14C-6a; to amend and reenact §11-15-18b of said code; and to amend and reenact §11-15A-13a of said code, all relating to the taxation of alternative fuel; defining terms; requiring the Tax Commissioner to determine the gasoline gallon equivalent for alternative fuels; imposing tax on motor fuel equivalent gallons; specifying the point of imposition of tax on alternative fuels not otherwise taxed at the point of imposition; providing that propane used in a motor vehicle is subject to the tax; requiring alternative-fuel bulk end users, providers of alternative fuels and retailers of alternative fuels to be licensed; establishing bonding requirements for alternative-fuel bulk end users, providers of alternative fuels and retailers of alternative fuels; establishing due dates for returns and payments of tax on alternative fuels; and specifying effective dates for amendments.
Be it enacted by the Legislature of West Virginia:

That §11-14C-2, §11-14C-5, §11-14C-9, §11-14C-10, §11-14C-13 and §11-14C-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-14C-6a; that §11-15-18b of said code be amended and reenacted; and that §11-15A-13a of said code be amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

PART I. GENERAL PROVISIONS.

§11-14C-2. Definitions.

As used in this article and unless the context requires otherwise, the following terms have the meaning ascribed herein.

(1) "Agricultural purposes" means the activities of:

(A) Cultivating the soil, including the planting and harvesting of crops, for the commercial production of food, fiber and ornamental woodland products;

(B) Using land for breeding and management of farm livestock including dairy, apiary, equine or poultry husbandry; and

(C) Using land for the practice of horticulture including the growing of Christmas trees, orchards and nursery stock. Agricultural purposes do not include commercial forestry, growing of timber for commercial purposes or other activity that normally would not be included in subdivision (A), (B) or (C) of this definition.
(2) "Aircraft" includes any airplane or helicopter.

(3) "Alcohol" means motor fuel grade ethanol or a mixture of motor fuel-grade ethanol and methanol, excluding denaturant and water that is a minimum of ninety-eight percent ethanol or methanol by volume.

(4) "Alternative fuel" means a combustible gas or liquid that is used or suitable for use as a motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle, machine or mechanical contrivance and includes, but is not limited to, products commonly known as butane, propane, compressed natural gas, liquefied natural gas, liquefied petroleum gas, natural gas hydrocarbons and derivatives, liquid hydrocarbons derived from biomass, P-series fuels and hydrogen. "Alternative fuel" does not include diesel fuel, gasoline, blended fuel, aviation fuel or any special fuel. For purposes of this article electricity is not an alternative fuel.

(5) "Alternative-fuel bulk end user" means a person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a motor vehicle.

(6) "Alternative-fuel commercial refueling infrastructure" means property owned by a commercial establishment and used for storing alternative fuels and for dispensing such alternative fuels into the fuel tanks of vehicles owned by the same person or entity that owns the alternative-fuel commercial refueling infrastructure or into the fuel tanks of privately owned vehicles or commercial vehicles other than those owned by the same person or entity that owns the alternative fuel commercial refueling infrastructure, or any combination thereof. "Alternative-fuel vehicle commercial refueling infrastructure" includes, but is not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered:
Provided, That the property is not located on a private residence or private home. "Alternative-fuel commercial refueling infrastructure" does not include any building, infrastructure, equipment, apparatus, terminal or connections for servicing, charging or providing electricity to plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel vehicle commercial refueling infrastructure" includes alternative-fuel vehicle commercial refueling infrastructure property as described in this subdivision which is owned by a lessor or landlord and leased to or rented to a lessee or tenant as part of a residence for such lessee or tenant.

(7) "Alternative-fuel home refueling infrastructure" means property owned by a private individual for personal use that is located at the individual's private residence or private home and used for storing and dispensing alternative fuels into fuel tanks of the property owner's motor vehicles. This includes, but is not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered. For purposes of this article, "alternative-fuel home refueling infrastructure" does not include any building, infrastructure, equipment, apparatus, terminal or connections for servicing, charging or providing electricity to plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel home refueling infrastructure" does not include alternative-fuel vehicle refueling infrastructure property owned by a lessor or landlord which is leased to or rented to a lessee or tenant as part of a residence for such lessee or tenant.

(8) "Article" or "this article" means article fourteen-c, chapter eleven of this code.

(9) "Assessment" means a written determination by the commissioner of the amount of taxes owed by a taxpayer.
(10) "Aviation fuel" means aviation gasoline or aviation jet fuel.

(11) "Aviation gasoline" means motor fuel designed for use in the operation of aircraft other than jet aircraft and sold or used for that purpose.

(12) "Aviation jet fuel" means motor fuel designed for use in the operation of jet or turbo-prop aircraft and sold or used for that purpose.

(13) "Biodiesel fuel" means motor fuel or mixture of motor fuels that is derived, in whole or in part, from agricultural products or animal fats, or the wastes of such products or fats, and is advertised as, offered for sale as, suitable for use or used as motor fuel in an internal combustion engine.

(14) "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid including, but not limited to, gasoline blend stocks, gasohol, ethanol, methanol, fuel grade alcohol, diesel fuel enhancers and resulting blends, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a motor fuel in a highway vehicle.

(15) "Blender" means a person who produces blended motor fuel outside the bulk transfer/terminal system.

(16) "Blending" means the mixing of one or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane or a marine vessel. Blending does not include mixing that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known...
as lubricating oil in the production of lubricating oils and greases.

(17) “Bulk plant” means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(18) “Bulk transfer” means any transfer of motor fuel from one location to another by pipeline tender or marine delivery within a bulk transfer/terminal system, including, but not limited to, all of the following:

(A) Movement of motor fuel from a refinery or terminal to a terminal by a marine vessel;

(B) Pipeline movements of motor fuel from a refinery or terminal to a terminal;

(C) Book transfer of motor fuel within a terminal between licensed suppliers prior to completion of removal across the rack; and

(D) Two-party exchange between licensed suppliers or between licensed suppliers and permissive suppliers.

(19) “Bulk user” means a person who maintains storage facilities for motor fuel and uses part or all of the stored motor fuel to operate a motor vehicle, watercraft or aircraft.

(20) “Bulk transfer/terminal system” means the motor fuel distribution system consisting of refineries, pipelines, marine vessels and terminals. Motor fuel in a refinery, a pipeline, a terminal or a marine vessel transporting motor fuel to a refinery or terminal is in the bulk transfer/terminal system. Motor fuel in a motor fuel storage facility including, but not limited to, a bulk plant that is not part of a refinery or terminal, in the motor fuel supply tank of an engine or motor
vehicle, in a marine vessel transporting motor fuel to a motor
fuel storage facility that is not in the bulk transfer/terminal
system, or in a tank car, rail car, trailer, truck or other
equipment suitable for ground transportation is not in the
bulk transfer/terminal system.

(21) “Carrier” means an operator of a pipeline or marine
vessel engaged in the business of transporting motor fuel
above the terminal rack.

(22) “Code” means the Code of West Virginia, 1931, as
amended.

(23) “Commercial watercraft” means a watercraft
employed in the business of commercial fishing, transporting
persons or property for compensation or hire or other trade or
business.

(24) “Commissioner” or “Tax Commissioner” means the
West Virginia State Tax Commissioner or his or her delegate.

(25) “Compressed natural gas” means natural gas that has
been compressed and dispensed into motor fuel storage
containers and is advertised as, offered for sale as, suitable
for use as or used as an engine motor fuel.

(26) “Corporate or partnership officer” means an officer
or director of a corporation, partner of a partnership or
member of a limited liability company who as an officer,
director, partner or member is under a duty to perform on
behalf of the corporation, partnership or limited liability
company, the tax collection, accounting or remitting
obligations.

(27) “Dead storage” is the amount of motor fuel that
cannot be pumped out of a motor fuel storage tank because
the motor fuel is below the mouth of the draw pipe. The
amount of motor fuel in dead storage is two hundred gallons for a tank with a capacity of less than ten thousand gallons and four hundred gallons for a tank with a capacity of ten thousand gallons or more.

(28) "Denaturants" means and includes gasoline, natural gasoline, gasoline components or toxic or noxious materials added to motor fuel grade ethanol to make it unsuitable for beverage use but not unsuitable for automotive use.

(29) "Designated inspection site" means a state highway inspection station, weigh station, agricultural inspection station, mobile station or other location designated by the commissioner to be used as a motor fuel inspection site.

(30) "Destination state" means the state, territory or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container or a type of transportation equipment for the purpose of resale or use. The term does not include a tribal reservation of a recognized Native American tribe.

(31) "Diesel fuel" means a liquid that is advertised as, offered for sale as, sold for use as, suitable for use as or used as a motor fuel in a diesel-powered highway vehicle or watercraft. The term includes #1 fuel oil, #2 fuel oil, undyed diesel fuel and kerosene but does not include gasoline or aviation fuel.

(32) "Distributor" means a person who acquires motor fuel from a licensed supplier, permissive supplier or from another licensed distributor for subsequent sale or use.

(33) "Diversion" means transporting motor fuel outside a reasonably direct route from the source to the destination state.
(34) “Division” or “State Tax Division” means the Tax Division of the West Virginia Department of Revenue.

(35) “Dyed diesel fuel” means diesel fuel that meets the dyeing and marking requirements of section 4082, Title 26, United States Code, regardless of how the diesel fuel was dyed.

(36) “End seller” means the person who sells motor fuel to the ultimate user of the motor fuel.

(37) “Export” means to obtain motor fuel in West Virginia for sale or other distribution in another state, territory or foreign country.

(38) “Exporter” means a person that exports motor fuel from this state. The seller is the exporter of motor fuel delivered out-of-state by or for the seller and the purchaser is the exporter of motor fuel delivered out-of-state by or for the purchaser.

(39) “Fuel” means motor fuel.

(40) “Fuel grade ethanol” means the ASTM standard in effect on the effective date of this article as the D-4806 specification for denatured motor fuel grade ethanol for blending with gasoline.

(41) “Fuel supply tank” means a receptacle on a motor vehicle from which motor fuel is supplied for the propulsion of the motor vehicle.

(42) “Gallon” means a unit of liquid measure as customarily used in the United States containing two hundred thirty-one cubic inches by volume and expresses the volume at 60 degrees Fahrenheit.
"Gasohol" means a blended motor fuel composed of gasoline and motor fuel alcohol.

"Gasoline" means a product commonly or commercially known as gasoline, regardless of classification, that is advertised as, offered for sale as, sold for use as, suitable for use as or used as motor fuel in an internal combustion engine, including gasohol, but does not include special fuel as defined in this section.

"Gasoline blend stocks" includes any petroleum product component of gasoline, such as naphtha, reformate, or toluene, listed in Treas. Reg. §48.4081-1(c) (3) that can be blended for use in a motor fuel. The term does not include any substance that will be ultimately used for consumer nonmotor fuel use and is sold or removed in drum quantities of fifty-five gallons or less at the time of the removal or sale.

"Gallon equivalent" means the amount of an alternative fuel that is considered to be the equivalent of a gallon of gasoline according to the National Institute of Standards and Technology Handbook 130 or pursuant to guidelines issued by the Tax Commissioner.

"Gross gallons" means the total measured product, exclusive of any temperature or pressure adjustments, considerations or deductions, in U. S. gallons.

"Governmental entity" means this state or a political subdivision thereof or the United States or its commissioners, agencies and instrumentalities.

"Heating oil" means any combustible liquid, including, but not limited to, #1 fuel oil, #2 dyed fuel oil and kerosene that is burned in a boiler, furnace or stove for heating or industrial processing purposes.
(50) "Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this state including the streets and alleys in towns and cities.

(51) "Highway vehicle" means any self-propelled vehicle, trailer or semitrailer that is designed or used for transporting persons or property over the public highway and includes all vehicles subject to registration under article three, chapter seventeen-a of this code.

(52) "Import" means to bring motor fuel into this state by motor vehicle, marine vessel, pipeline or any other means. Import does not include bringing motor fuel into this state in the motor fuel supply tank of a motor vehicle if the motor fuel is used to power that motor vehicle.

(53) "Importer" means a person that imports motor fuel into this state. The seller is the importer for motor fuel delivered into this state from outside of this state by or for the seller and the purchaser is the importer for motor fuel delivered into this state from outside of this state by or for the purchaser.

(54) "Import verification number" means the number assigned by the commissioner to a single transport vehicle delivery into this state from another state upon request for an assigned number by an importer or the transporter carrying taxable motor fuel into this state for the account of an importer.

(55) "In this state" means the area within the borders of West Virginia including all territory within the borders of West Virginia that is owned by the United States of America.

(56) "Invoiced gallons" means the gallons actually billed on an invoice for payment.
(57) "Licensee" means a person licensed by the commissioner pursuant to section ten of this article.

(58) "Liquid" means a substance that is liquid above its freezing point.

(59) "Liquefied natural gas" means natural gas that has been liquefied at -126.1 degrees centigrade and stored in insulated cryogenic tanks for use as an engine motor fuel.

(60) "Motor carrier" means a vehicle used, designated or maintained for the transportation of persons or property and having two axles and a gross vehicle weight exceeding twenty-six thousand pounds or having three or more axles regardless of weight or used in combination when the weight of the combination exceeds twenty-six thousand pounds or registered gross vehicle weight, and any aircraft, barge or other watercraft or railroad locomotive transporting passengers or freight in or through this state: Provided, That the gross vehicle weight rating of the vehicles being towed is in excess of ten thousand pounds. The term motor carrier does not include any type of recreational vehicle.

(61) "Motor fuel" means gasoline, blended fuel, aviation fuel, any special fuel and alternative fuel.

(62) "Motor fuel transporter" means a person who transports motor fuel outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car or a marine vessel.

(63) "Motor vehicle" means automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of motor fuel.
(64) “Net gallons” means the amount of motor fuel measured in gallons when adjusted to a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds pressure per square inch.

(65) “Permissive supplier” is a person who may not be subject to the taxing jurisdiction of this state but who meets both of the following requirements: (A) is registered under Section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal system; and (B) a position holder in motor fuel only located in another state or a person who receives motor fuel only in another state pursuant to a two-party exchange: Provided, That a person is classified as a supplier if it has or maintains, occupies or uses, within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent or representative (by whatever name called) operating within this state under the authority of the supplier or its subsidiary.

(66) “Person” means an individual, firm, cooperative, association, corporation, limited liability corporation, estate, guardian, executor, administrator, trust, business trust, syndicate, partnership, limited partnership, copartnership, organization, limited liability partnership, joint venture, receiver and trustee in bankruptcy. “Person” also means a club, society or other group or combination acting as a unit, a public body including, but not limited to, this state and any other state and an agency, commissioner, institution, political subdivision or instrumentality of this state or any other state and, also, an officer, employee or member of any of the foregoing who, as an officer, employee or member, is under a duty to perform or is responsible for the performance of an act prescribed by the provisions of this article.

(67) “Position holder” means the person who holds the inventory position in motor fuel in a terminal as reflected on
the records of the terminal operator. A person holds the
inventory position in motor fuel when that person has a
contract with the terminal operator for the use of storage
facilities and terminaling services for motor fuel at the
terminal. The term includes a terminal operator who owns
motor fuel in the terminal.

(68) “Principal” means:

(A) If a partnership, all its partners;

(B) If a corporation, all its officers, directors, and
controlling direct or indirect owners;

(C) If a limited liability company, all its members; or

(D) An individual.

(69) “Producer/manufacturer” means a person who
produces, refines, blends, distills, manufactures or
compounds motor fuel.

(70) “Provider of alternative fuel” means a person who
does one or more of the following:

(A) Acquires alternative fuel for sale or delivery to an
alternative-fuel bulk end user or an alternative-fuel retailer;

(B) Maintains storage facilities for alternative fuel
including alternative-fuel home refueling infrastructures and
alternative-fuel commercial refueling infrastructures, part or
all of which the person uses or sells to someone other than an
alternative-fuel bulk end user or an alternative-fuel retailer to
operate a highway vehicle;

(C) Sells alternative fuel and uses part of the fuel
acquired for sale to operate a highway vehicle by means of a
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fuel supply line from the cargo tank of the vehicles to the
engine of the vehicle;

(D) Imports alternative fuel into this state by a means
other than the usual tank or receptacle connected with the
gas engine of a highway vehicle for use by that person to operate
a highway vehicle.

(71) “Rack” means a mechanism for delivering motor
fuel from a refinery, terminal, marine vessel or bulk plant into
a transport vehicle, railroad tank car or other means of
transfer that is outside the bulk transfer/terminal system.

(72) “Railroad locomotive” means diesel-powered
equipment or machinery that rides on railroad rails and
includes a switching engine.

(73) “Receive” means acquisition of ownership or
possession of motor fuel.

(74) “Refiner” means a person who owns, operates or
otherwise controls a refinery.

(75) “Refinery” means a facility for the manufacture or
reprocessing of finished or unfinished petroleum products
usable as motor fuel and from which motor fuel may be
removed by pipeline or marine vessel or at a rack.

(76) “Removal” means a physical transfer other than by
evaporation, loss or destruction. A physical transfer to a
transport vehicle or other means of conveyance outside the
bulk transfer/terminal system is complete upon delivery into
the means of conveyance.

(77) “Retailer” means a person who sells motor fuel at
retail or dispenses motor fuel at a retail location.
(78) “Retailer of alternative fuel” means a person who maintains storage facilities, including alternative-fuel vehicle commercial refueling infrastructure, for alternative fuel and who sells the fuel at retail or dispenses the fuel at a retail location to operate a motor vehicle.

(79) “Special fuel” means a gas or liquid, other than gasoline, used or suitable for use as motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle, machine, or mechanical contrivance and includes products commonly known as natural or casing-head gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel, transmix, methanol, ethanol, methanol fuel, M100, ethanol fuel, E100, ethanol fuel blend, E85 and any fuel mixture that contains eighty-five percent or more alcohol by volume when combined with gasoline or other fuels and liquid fuel derived from coal through the Fischer-Tropsch process. “Special fuel” does not include alternative fuel or any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil or lubricant, unless blended in or sold for use as motor fuel in an internal combustion engine.

(80) “State” or “this state” means the State of West Virginia.

(81) “Supplier” means a person that is:

(A) Subject to the general taxing jurisdiction of this state;

(B) Registered under Section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal distribution system; and

(C) One of the following:

(i) A position holder in motor fuel in a terminal or refinery in this state and may concurrently be a position holder in motor fuel in another state; or
(ii) A person who receives motor fuel in this state pursuant to a two-party exchange.

A terminal operator is not a supplier based solely on the fact that the terminal operator handles motor fuel consigned to it within a terminal.

(82) "Tax" or "this tax" is the motor fuel excise tax imposed by this article and includes within its meaning interest and additions to tax and penalties unless the context requires a more limited meaning.

(83) "Taxpayer" means a person required to file a return for the tax imposed by this article or a person liable for payment of the tax imposed by this article.

(84) "Terminal" means a motor fuel storage and distribution facility to which a terminal control number has been assigned by the Internal Revenue Service, to which motor fuel is supplied by pipeline or marine vessel and from which motor fuel may be removed at a rack.

(85) "Terminal operator" means a person who owns, operates or otherwise controls a terminal.

(86) "Transmix" means: (A) The buffer or interface between two different products in a pipeline shipment; or (B) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

(87) "Transport vehicle" means a vehicle designed or used to carry motor fuel over the highway and includes a straight truck, a straight truck/trailer combination and a semitrailer combination rig.

(88) "Trustee" means a person who is licensed as a supplier or a permissive supplier and receives tax payments
from and on behalf of another pursuant to section twenty-four of this article.

(89) "Two-party exchange" means a transaction in which motor fuel is transferred from one licensed supplier or permissive supplier to another licensed supplier or permissive supplier pursuant to an exchange agreement; and

(A) Includes a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator;

(B) Is completed prior to removal of the product from the terminal by the receiving exchange partner; and

(C) Is recorded on the terminal operator's books and records with the receiving exchange partner as the supplier that removes the motor fuel across the terminal rack for purposes of reporting the transaction to this state.

(90) "Use" means the actual consumption or receipt of motor fuel by a person into a motor vehicle, aircraft or watercraft.

(91) "Watercraft" means any vehicle used on waterways.

§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 and, on alternative fuel, on each gallon equivalent, plus a variable component comprised of:

1. On motor fuel other than alternative fuel, 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; and

(2) On alternative fuel, 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. The tax on alternative fuel takes effect on January 1, 2014, with a variable component equal to five percent of the average wholesale price of the alternative fuel.

(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 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 or on each
gallon equivalent of alternative fuel as determined by the Tax Commissioner from information furnished by suppliers, importers and distributors of motor fuel and alternative-fuel providers, alternative-fuel bulk end users and retailers of alternative fuel in this state, or other information regarding wholesale selling prices as the Tax Commissioner may gather or a combination of information. In no event shall the average wholesale price be determined to be less than $.97 per gallon of motor fuel. 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. 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. 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. Any limitation on the average wholesale price of motor fuel contained in this subsection shall not be applicable to alternative 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 a 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 an 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 drain 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.

(c) The Tax Commissioner shall determine by January 1, 2014, the gasoline gallon equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State Register and by other means that the Tax Commissioner considers reasonable. The Tax Commissioner may redetermine the gasoline gallon equivalent for each alternative fuel by filing a notice of the gasoline gallon
equivalent in the State Register at least thirty days in advance of January 1 for the next succeeding tax year. For purposes of this notice, the Tax Commissioner may adopt or incorporate by reference provisions of the National Institute of Standards and Technology, United States Department of Commerce, the Internal Revenue Code, United States Treasury Regulations, the Internal Revenue Service publications or guidelines or other publications or guidelines which may be useful in determining, setting or describing the gasoline gallon equivalent for each alternative fuel used as motor fuel.

§11-14C-6a. Point of imposition of motor fuels tax on alternative fuel.

(a) The tax levied pursuant to section five of this article is imposed on alternative fuel without regard to whether it is sold, transported or distributed within the bulk transfer/terminal system or outside of the bulk transfer/terminal system.

(b) The tax levied pursuant to section five of this article is imposed on alternative fuel that is not otherwise taxed at the point of imposition prescribed under section six of this article at the following points of imposition in the following order:

(1) At the time alternative fuel is withdrawn from the storage facility including alternative-fuel home refueling infrastructures and alternative-fuel commercial refueling infrastructures;

(2) If not taxed at the point of imposition described in subdivision (1) of this subsection, then at the time alternative fuel is sold for use in a highway vehicle;
§11-14C-9. Exemptions from tax; claiming refunds of tax.

(a) Per se exemptions from flat rate component of tax. — Sales of motor fuel to the following, or as otherwise stated in this subsection, are exempt per se from the flat rate of the tax levied by section five of this article and the flat rate may not be paid at the rack:

(1) All motor fuel exported from this state to any other state or nation: Provided, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation. This exemption does not apply to motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(2) Sales of aviation fuel;

(3) Sales of dyed special fuel; and

(4) Sales of propane unless sold for use in a motor vehicle.

(b) Per se exemptions from variable component of tax. — Sales of motor fuel to the following arc exempt per se from the variable component of the tax levied by section five of this article and the variable component may not be paid at the rack:

All motor fuel exported from this state to any other state or nation: Provided, That the supplier collects and remits to the destination state or nation the appropriate amount of tax
due on the motor fuel transported to that state or nation. This exemption does not apply to motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.

(c) **Refundable exemptions from flat rate component of tax.** A person having a right or claim to any of the following exemptions from the flat rate component of the tax levied by section five of this article shall first pay the tax levied by this article and then apply to the Tax Commissioner for a refund:

(1) The United States or agency thereof: Provided, That if the United States government, or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of this article on a purchase of motor fuel, the person selling tax previously paid motor fuel to the United States government, or its agencies or instrumentalities, may claim a refund of the flat rate component of tax imposed by section five of this article on those sales;

(2) A county government or unit or agency thereof;

(3) A municipal government or any agency thereof;

(4) A county board of education;

(5) An urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;

(6) A municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith or to a person who is required to maintain an inventory of motor fuel for the purpose of the program: Provided, That motor fueling facilities used for these purposes are not capable of fueling
motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the Tax Commissioner certifying his or her right to the exemption. In order for this exemption to apply, motor fuel sold under this subdivision and subdivisions (1) through (5), inclusive, of this subsection shall be used in vehicles or equipment owned and operated by the respective government entity or government agency or authority;

(7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund or the exporter has reported to the destination state or nation that the motor fuel was sold in a transaction not subject to tax in that state or nation. A refund may not be granted on motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(8) All gallons of motor fuel used and consumed in stationary off-highway turbine engines;

(9) All gallons of fuel used for heating any public or private dwelling, building or other premises;

(10) All gallons of fuel used for boilers;

(11) All gallons of motor fuel used as a dry cleaning solvent or commercial or industrial solvent;

(12) All gallons of motor fuel used as lubricants, ingredients or components of a manufactured product or compound;

(13) All gallons of motor fuel sold for use or used as a motor fuel for commercial watercraft;
(14) All gallons of motor fuel sold for use or consumed in railroad diesel locomotives;

(15) All gallons of motor fuel purchased in quantities of twenty-five gallons or more for use as a motor fuel for internal combustion engines not operated upon highways of this state;

(16) All gallons of motor fuel purchased in quantities of twenty-five gallons or more and used to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary equipment uses motor fuel and there is no auxiliary motor for the equipment or separate tank for a motor, the person claiming the refund may present to the Tax Commissioner a statement of his or her claim and is allowed a refund for motor fuel used in operating a power take-off unit on a cement mixer truck or garbage truck equal to twenty-five percent of the tax levied by this article paid on all motor fuel used in such a truck;

(17) Motor fuel used by a person regularly operating a vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons when purchased in an amount of twenty-five gallons or more: Provided, That the amount refunded is equal to $0.6 per gallon: Provided, however, That the gallons of motor fuel have been consumed in the operation of urban and suburban bus lines and the majority of passengers use the bus for traveling a distance not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools; and

(18) All gallons of motor fuel that are not otherwise exempt under subdivisions (1) through (6), inclusive, of this subsection and that are purchased and used by any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the
municipality or county wherein the bona fide volunteer fire
department, nonprofit ambulance service or emergency
rescue service is located.

(d) **Refundable exemptions from variable rate component of tax.** – Any of the following persons may claim an exemption from the variable rate component of the tax levied by section five of this article on the purchase and use of motor fuel by first paying the tax levied by this article and then applying to the Tax Commissioner for a refund.

1. The United States or agency thereof: *Provided. That*
   if the United States government, or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of this article on any purchase of motor fuel, the person selling tax previously paid motor fuel to the United States government, or its agencies or instrumentalities, may claim a refund of the variable rate of tax imposed by section five of this article on those sales.

2. This state and its institutions;

3. A county government or unit or agency thereof;

4. A municipal government or agency thereof;

5. A county board of education;

6. An urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;

7. A municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith, or to a person who is required to maintain an inventory of motor fuel for the purpose of the program: *Provided. That fueling facilities used*
for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the Tax Commissioner certifying his or her right to the exemption;

(8) A bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county where the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located; or

(9) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund. A refund may not be granted on motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.

(e) The provision in subdivision (9), subsection (a), section nine, article fifteen of this chapter that exempts as a sale for resale those sales of gasoline and special fuel by a distributor or importer to another distributor does not apply to sales of motor fuel under this article.

PART 3. MOTOR FUEL LICENSING.

§11-14C-10. Persons required to be licensed.

(a) A person shall obtain the appropriate license or licenses issued by the commissioner before conducting the activities of:

(1) A supplier which includes a refiner;

(2) A permissive supplier;
An importer;

An exporter;

A terminal operator;

A blender;

A motor fuel transporter;

A distributor;

A producer/manufacturer;

An alternative-fuel bulk end user;

A provider of alternative fuel; or

A retailer of alternative fuel.

(b) A person who is engaged in more than one activity for which a license is required shall have a separate license for each activity, except as otherwise determined by the commissioner.

§11-14C-13. Bond requirements.

(a) Along with an application for a license required by section eleven of this article, either a cash bond or a continuous surety bond in the amount or amounts specified in this section shall be filed. If a person has filed applications for licenses for more than one activity, the commissioner may combine the amount of the cash bond or continuous surety bond required for each licensed activity into one amount that shall be no less than the largest amount required for any of those activities for which the license applications are filed. If a continuous surety bond is filed, an annual notice of
renewal shall be filed thereafter. If the continuous surety bond includes the requirements that the commissioner is to be notified of cancellation at least sixty days prior to the continuous surety bond being canceled, an annual notice of renewal is not required. The bond, whether a cash bond or a continuous surety bond, is conditioned upon compliance with the requirements of this article, payable to this state and in the form required by the commissioner. The amount of the bond is as follows:

(1) For a supplier license, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(2) For a permissive supplier license, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(3) For a terminal operator license, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(4) For an importer license for a person, other than a supplier, that imports by transport vehicle or another means of transfer outside the bulk transfer/terminal system motor
fuel removed from a terminal located in another state in which: (A) The state from which the motor fuel is imported does not require the seller of the motor fuel to collect a motor fuel excise tax on the removal either at that state’s rate or the rate of the destination state; and (B) the seller of the motor fuel is not a permissive supplier, the amount shall be a minimum of $100,000 or an amount equal to three months’ tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(5) For an importer license for a person that imports by transport vehicle or another means outside the bulk transfer/terminal system motor fuel removed from a terminal located in another state in which: (A) The state from which the motor fuel is imported requires the seller of the motor fuel to collect a motor fuel excise tax on the removal either at that state’s rate or the rate of the destination state; or (B) the seller of the motor fuel is a permissive supplier, the amount shall be a minimum of $2,000 or an amount equal to three months’ tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(6) For a license as both a distributor and an importer as described in subdivision (4) of this subsection, the amount shall be a minimum of $100,000 or an amount equal to three months’ tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;
(7) For a license as both a distributor and an importer as described in subdivision (5) of this subsection, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(8) For an exporter license, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(9) For a blender license, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(10) For a distributor license, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(11) For a motor fuel transporter license, there is no bond;
(12) For a producer/manufacturer license, there is no bond. If the taxpayer fails to file a return or remit tax due under this article, the commissioner may require a cash bond or a continuous surety bond in an amount to be determined by the commissioner. When required by the commissioner to file a cash bond or a continuous surety bond, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(13) For an alternative-fuel bulk end user, a provider of alternative fuel and a retailer of alternative fuel, there is no bond. If the taxpayer fails to file a return or remit tax due under this article, the commissioner may require a cash bond or a continuous surety bond in an amount to be determined by the commissioner. When required by the commissioner to file a cash bond or a continuous surety bond, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification; and

(14) An applicant for a licensed activity listed under subdivisions (1) through (10), inclusive, of this subsection may, in lieu of posting either the cash bond or continuous surety bond required by this subsection, provide proof of financial responsibility acceptable to the commissioner. The proof of financial responsibility must demonstrate the absence of circumstances indicating risk with the collection of taxes from the applicant. The following constitutes proof of financial responsibility:

(A) Proof of $5 million net worth constitutes evidence of financial responsibility in lieu of posting the required bond;

(B) Proof of $2,500,000 net worth constitutes financial responsibility in lieu of posting fifty percent of the required bond; and
(C) Proof of $1,250,000 net worth constitutes financial responsibility in lieu of posting twenty-five percent of the required bond. Net worth is calculated on a business, not individual basis.

(15) In lieu of providing either cash bond, a continuance surety bond or proof of financial responsibility acceptable to the commissioner, an applicant for a licensed activity listed under this subsection that has established with the state tax division a good filing record that is accurate, complete and timely for the preceding eighteen months shall be granted a waiver of the requirement to file either a cash bond or continuance surety bond. When a licensee that has been granted a waiver of the requirement to file a bond violates a provision of this article, the licensee shall file the applicable bond as stated in this subsection.

(16) A licensee who disagrees with the commissioner's decision requiring new or additional security may seek a hearing by filing a petition with the Office of Tax Appeals in accordance with the provisions of section nine, article ten-a of this chapter. The hearing shall be provided within thirty days after receipt by the office of tax appeals of the petition.

(b) The surety must be authorized under article nineteen, chapter thirty-three of this code to engage in business of transacting surety insurance within this state. The cash bond and the continuous surety bond are conditioned upon faithful compliance with the provisions of this article, including the filing of the returns and payment of all tax prescribed by this article. The cash bond and the continuous surety bond shall be approved by the commissioner as to sufficiency and form and shall indemnify the state against loss arising from the failure of the taxpayer to pay, for any cause whatever, the motor fuel excise tax levied by this article.
(c) Surety on a continuous surety bond furnished hereunder is relieved, released and discharged from all liability accruing on the bond after the expiration of sixty days from the date the surety shall have lodged, by certified mail, with the commissioner, a written request to be discharged. Discharge from the continuous surety bond does not relieve, release or discharge the surety from liability already accrued or which will accrue before the expiration of the sixty-day period. Whenever a surety seeks discharge as herein provided, it is the duty of the principal of the bond to supply the commissioner with another continuous surety bond or a cash bond prior to the expiration of the original bond. Failure to provide a new continuous surety bond or a cash bond shall result in the commissioner canceling each license and registration previously issued to the person.

(d) A taxpayer that has furnished a cash bond hereunder is relieved, released and discharged from all liability accruing on the cash bond after the expiration of sixty days from the date the taxpayer shall have lodged, by certified mail, with the commissioner, a written request to be discharged and the amount of the cash bond refunded. The commissioner may retain all or part of the cash bond refunded. The commissioner may perform an audit of the taxpayer’s business or three years, whichever first occurs. Discharge from the cash bond shall not relieve, release or discharge the taxpayer from liability already accrued or which will accrue before the expiration of the sixty-day period. Whenever a taxpayer seeks discharge as herein provided, it is the duty of the taxpayer to provide the commissioner with another cash bond or a continuous surety bond prior to the expiration of the original cash bond. Failure to provide either a new cash bond or a continuous surety bond shall result in the commissioner canceling each license and registration previously issued to the person.

PART 4. PAYMENT AND REPORTING OF TAX ON MOTOR FUEL.
§11-14C-19. When tax return and payment are due.

(a) The tax levied by this article shall be paid by each taxpayer on or before the last day of the calendar month by check, bank draft or money order payable to the commissioner for the amount of tax due, if any, for the preceding month. 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. If no tax is due, the return required by the commissioner shall be completed and filed before the last day of the calendar month for the preceding month.

(b) The following shall file a monthly return as required by this section:

(1) A terminal operator;

(2) A supplier;

(3) An importer;

(4) A blender;

(5) A person incurring liability under section eight of this article for the backup tax on motor fuel;

(6) A permissive supplier;

(7) A motor fuel transporter;

(8) An exporter; and

(9) A producer/manufacturer.
(c) For the calendar years beginning on or after January 1, 2014, the tax levied by this article on alternative fuel that is subject to tax at the point of imposition prescribed in section six-a of this article shall be paid by the alternative-fuel bulk end user, provider of alternative fuel or retailer of alternative fuel on or before January 31 of every year, unless determined by the Tax Commissioner that payment must be made more frequently, by check, bank draft or money order payable to the Tax Commissioner for the amount of tax due. The Tax Commissioner may require all or certain taxpayers to file tax returns and payments electronically. The return required by the Tax Commissioner shall accompany the payment of tax. If no tax is due, the return required by the Tax Commissioner shall be completed and filed on or before January 31.

ARTICLE 15. CONSUMER SALES AND SERVICE TAX.


(a) General. — All sales of motor fuel and alternative 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 and comprises the variable component of the tax imposed by section five, article fourteen-c of this chapter and is collected and remitted at the time the tax imposed by said section is remitted. Sales of motor fuel and alternative fuel upon which the tax imposed by this article has been paid is not again taxed under the provisions of this article. This section means that all gallons of motor fuel and equivalent gallons of alternative 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 is as follows:

On sales of motor fuel, 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, may 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. On and after January 1, 2010, for the purpose of taxation under this article, in no case may 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. Any limitation on the average wholesale price of motor fuel contained in this subsection shall not be applicable to alternative fuel.

(2) On sales of alternative fuel, the average wholesale price as defined and determined in section five, article fourteen-c of this chapter.

(c) Definitions. – For purposes of this article, the terms “gasoline” and “special fuel” and “alternative 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. –

(1) The tax imposed by this article on sales of motor fuel shall be paid by each taxpayer 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. 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. 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.

(2) The tax due under this article comprising the variable
component of the tax due under article fourteen-c of this
chapter on alternative fuel, is due and shall be collected and
remitted at the time the tax imposed by section five, article
fourteen-c of this chapter is due, collected and remitted.

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 fourteen-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
article fourteen-c of this chapter is the last day of each month
notwithstanding any provision in said article to the contrary.
The Tax Commissioner may prescribe reporting and payment
requirements for tax due under this article on alternative fuel
which accommodate the due dates and requirements
prescribed in this article and article fourteen-c of this chapter,
either under a separate return and payment or a combined
return and payment, within the discretion of the Tax
Commissioner.

(f) Dedication of tax.—All tax collected under the
provisions of this section, after deducting the amount of
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. Notwithstanding any
provision to the contrary, tax collected on the sale of aviation
fuel after deducting the amount of 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 does not tax a 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 provisions of this section enacted
during the 2013 regular legislative session take effect on
January 1, 2014.

ARTICLE 15A. USE TAX.


(a) Imposition of tax. –

(1) On deliveries in this state. – Effective January 1,
2004, motor fuel furnished or delivered within this state
which is subject to the flat rate of the tax imposed by section
five, article fourteen-c of this chapter is subject to the tax
imposed by this article which comprises the variable
component of the tax imposed by section five, article
fourteen-c, and shall be collected and remitted at the time the
tax imposed by section five, article fourteen-c is remitted.
The amount of tax due under this article shall not be less than
five percent of the average wholesale price of motor fuel as
determined in accordance with said section five, article fourteen-c.

(2) On purchases out-of-state subject to motor fuel tax. – Effective January 1, 2004, an excise tax is imposed on the importation into this state of motor fuel purchased outside this state when the purchase is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter. The rate of the tax due under this article shall not be less than five percent of the average wholesale price of the motor fuel, as determined in accordance with said section five, article fourteen-c. The motor fuel subject to the tax imposed by this article comprises the variable component of the tax imposed by section five, article fourteen-c, and shall be collected and remitted by the seller at the time the seller remits the tax imposed by the said section five, article fourteen-c.

(3) On other purchases out-of-state. – An excise tax is imposed on the use or consumption in this state of motor fuel purchased outside this state at the rate of five percent of the average wholesale price of the motor fuel, as determined in accordance with section five, article fourteen-c of this chapter. Motor fuel contained in the fuel supply tank of a motor vehicle that is not a motor carrier is not taxable except that motor fuel imported in the fuel supply tank or auxiliary tank of construction equipment, mining equipment, track maintenance equipment or other similar equipment, is taxed in the same manner as that in the fuel supply tank of a motor carrier.

(4) On use of alternative fuel – Effective January 1, 2014, an excise tax is imposed on alternative fuel used within this state which is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter. Alternative fuel is subject to the tax imposed by this article and comprises the variable component of the tax imposed by section five, article fourteen-c of this chapter and shall be
collected and remitted at the time the tax imposed by section five, article fourteen-c of this chapter is remitted. The amount of tax due under this article shall not be less than five percent of the average wholesale price of alternative fuel as determined in accordance with section five, article fourteen-c of this chapter.

(b) 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 article fourteen-c of this chapter.

(c) Computation of tax due from motor carriers. – Every person who operates or causes to be operated a motor carrier in this state shall pay the tax imposed by this section on the average wholesale price of all gallons or equivalent gallons of motor fuel used in the operation of a motor carrier within this state, under the following rules:

(1) The total amount of motor fuel used in the operation of the motor carrier within this state is that proportion of the total amount of motor fuel used in a motor carrier’s operations within and without this state, that the total number of miles traveled within this state bears to the total number of miles traveled within and without this state.

(2) A motor carrier shall first determine the gross amount of tax due under this section on the average wholesale value, determined under section five, article fourteen-c of this chapter, of motor fuel used in the operation of the motor carrier within this state during the preceding quarter, as if all gasoline and special fuel had been purchased outside this state.

(3) Next, the taxpayer shall determine the total tax paid under article fifteen of this chapter on all motor fuel
purchased in this state for use in the operation of the motor
carrier.

(4) The difference between (2) and (3) is the amount of
tax due under this article when (2) is greater than (3), or the
amount to be refunded or credited to the motor carrier when
(3) is greater than (2), which refund or credit is allowed in the
same manner and under the same conditions as a refund or
credit is allowed for the tax imposed by article fourteen-a of
this chapter.

(d) Return and payment of tax. — Tax due under this
article on the uses or consumption in this state of motor fuel
shall be paid by each taxpayer on or before January 25, April
25, July 25 and October 25 of each year, notwithstanding any
provision of this article to the contrary, by check, bank draft,
certified check or money order, payable to the Tax
Commissioner, for the amount of tax due for the preceding
quarter. The tax due under this article comprising the
variable component of the tax due under article fourteen-c of
this chapter is due on the last day of the month. Every
taxpayer shall make and file with his or her remittance, a
return showing the information the Tax Commissioner
requires. The tax due under this article comprising the
variable component of the tax due under article fourteen-c of
this chapter on alternative fuel, is due and shall be collected
and remitted at the time the tax imposed by section five,
article fourteen-c of this chapter is due, collected and
remitted.

(e) Compliance. — To facilitate ease of administration and
compliance by taxpayers, the Tax Commissioner shall require
motor carriers liable for the taxes imposed by this article on
the use of motor fuel in the operation of motor carriers within
this state, and the tax imposed by article fourteen-a of this
chapter on such gallons of motor fuel, to file a combined
return and make a combined payment of the tax due under
this article and article fourteen-a of this chapter on the fuel.

In order to encourage use of a combined return and the making of a single payment each quarter for both taxes, the due date of the return and tax due under article fourteen-a of this chapter is the last day of January, April, July and October of each calendar year: Provided, That the Tax Commissioner may prescribe reporting and payment requirements for tax due under this article on alternative fuel which accommodate the due dates and requirements prescribed in this article and article fourteen-c of this chapter, either under a separate return and payment or a combined return and payment, within the discretion of the Tax Commissioner.

(f) Dedication of tax to highways. – Tax collected under the provisions of this section, after deducting the amount of 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.

(g) Construction. – The tax imposed by this article on the use of motor fuel in this state does not tax motor fuel which the 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 January 1, 2004. The provisions of this section enacted during the 2013 legislative session take effect on January 1, 2014.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Originated in the Senate.
In effect ninety days from passage.

The within ............... this the 3rd Day of May, ....................... 2013.

[Signature]
Governor