

**H. B. 4447**

(By Delegates Ellington, Overington, Householder,  
Storch, Gearheart and Snuffer)

[Introduced February 7, 2012; referred to the  
Committee on Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §11-14C-5 of the Code of West Virginia,  
1931, as amended, relating to reducing the motor fuel excise  
tax.

*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 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 of \$.15 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~~

1 ~~variable component shall be equal to five percent of the average~~  
2 ~~wholesale price of the motor fuel: *Provided further, That the*~~  
3 ~~average wholesale price shall be no less than \$.97 per invoiced~~  
4 ~~gallon and is computed as hereinafter prescribed in this section:~~  
5 ~~*And provided further, That on and after January 1, 2010, the*~~  
6 ~~average wholesale price shall be no less than \$2.34 per invoiced~~  
7 ~~gallon and is computed as hereinafter prescribed in this section.~~

8 ~~(b) *Determination of average wholesale price.* --~~

9 ~~(1) To simplify determining the average wholesale price of all~~  
10 ~~motor fuel, the Tax Commissioner shall, effective with the period~~  
11 ~~beginning the first day of the month of the effective date of the~~  
12 ~~tax and each January 1 thereafter, determine the average wholesale~~  
13 ~~price of motor fuel for each annual period on the basis of sales~~  
14 ~~data gathered for the preceding period of July 1 through October~~  
15 ~~31. Notification of the average wholesale price of motor fuel~~  
16 ~~shall be given by the Tax Commissioner at least thirty days in~~  
17 ~~advance of each January 1 by filing notice of the average wholesale~~  
18 ~~price in the State Register and by any other means as the Tax~~  
19 ~~Commissioner considers reasonable.~~

20 ~~(2) The "average wholesale price" means the single, statewide~~  
21 ~~average per gallon wholesale price, rounded to the third decimal~~  
22 ~~(thousandth of a cent), exclusive of state and federal excise taxes~~  
23 ~~on each gallon of motor fuel, as determined by the Tax Commissioner~~  
24 ~~from information furnished by suppliers, importers and distributors~~

~~1 of motor fuel in this state, or other information regarding  
2 wholesale selling prices as the Tax Commissioner may gather, or a  
3 combination of information: *Provided*, That in no event shall the  
4 average wholesale price be determined to be less than \$.97 per  
5 gallon of motor fuel: *Provided*, however, That for calendar year  
6 2009, the average wholesale price of motor fuel shall not exceed  
7 the average wholesale price of motor fuel for calendar year 2008 as  
8 determined pursuant to the notice filed by the Tax Commissioner  
9 with the Secretary of State on November 21, 2007, and published in  
10 the State Register on November 30, 2007: *Provided further*, That on  
11 and after January 1, 2010, in no event shall the average wholesale  
12 price be determined to be less than \$2.34 per gallon of motor fuel:  
13 *And provided further*, That on and after January 1, 2011, the  
14 average wholesale price shall not vary by more than ten percent  
15 from the average wholesale price of motor fuel as determined by the  
16 Tax Commissioner for the previous calendar year.~~

~~17 (3) All actions of the Tax Commissioner in acquiring data  
18 necessary to establish and determine the average wholesale price of  
19 motor fuel, in providing notification of his or her determination  
20 prior to the effective date of any change in rate, and in  
21 establishing and determining the average wholesale price of motor  
22 fuel may be made by the Tax Commissioner without compliance with  
23 the provisions of article three, chapter twenty-nine-a of this  
24 code.~~

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

5       ~~(c)~~ (b) There is hereby levied a floorstocks tax on motor  
6 fuel held in storage outside the bulk transfer/terminal system as  
7 of the close of the business day preceding January 1, 2004, and  
8 upon which the tax levied by this section has not been paid. For  
9 the purposes of this section, "close of the business day" means the  
10 time at which the last transaction has occurred for that day. The  
11 floorstocks tax is payable by the person in possession of the motor  
12 fuel on January 1, 2004. The amount of the floorstocks tax on  
13 motor fuel is equal to the sum of the tax rate specified in  
14 subsection (a) of this section multiplied by the gallons in storage  
15 as of the close of the business day preceding January 1, 2004.

16       (1) Persons in possession of taxable motor fuel in storage  
17 outside the bulk transfer/terminal system as of the close of the  
18 business day preceding January 1, 2004, shall:

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

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

24       (C) Remit the tax levied under this section no later than June

1 1, 2004.

2 (2) In the event the tax due is paid to the commissioner on or  
3 before January 31, 2004, the person remitting the tax may deduct  
4 from their remittance five percent of the tax liability due.

5 (3) In the event the tax due is paid to the commissioner after  
6 June 1, 2004, the person remitting the tax shall pay, in addition  
7 to the tax, a penalty in the amount of five percent of the tax  
8 liability due.

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

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

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

23 (d) Every licensee who, on the effective date of any rate  
24 change, has in inventory any motor fuel upon which the tax or any

1 portion thereof has been previously paid shall take a physical  
2 inventory and file a report thereof with the commissioner, in the  
3 format as required by the commissioner, within thirty days after  
4 the effective date of the rate change, and shall pay to the  
5 commissioner at the time of filing the report any additional tax  
6 due under the increased rate.

NOTE: The purpose of this bill is to reduce the tax on motor fuel.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.