

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 454**

7 (SENATORS PREZIOSO AND FACEMIRE, *original sponsors*)

8 _____
9 [Passed April 13, 2013; in effect ninety days from passage.]
10 _____

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12
13 AN ACT to amend and reenact §11-14C-2, §11-14C-5, §11-14C-9,
14 §11-14C-10, §11-14C-13 and §11-14C-19 of the Code of West
15 Virginia, 1931, as amended; to amend said code by adding
16 thereto a new section, designated §11-14C-6a; to amend and
17 reenact §11-15-18b of said code; and to amend and reenact
18 §11-15A-13a of said code, all relating to the taxation of
19 alternative fuel; defining terms; requiring the Tax
20 Commissioner to determine the gasoline gallon equivalent for
21 alternative fuels; imposing tax on motor fuel equivalent
22 gallons; specifying the point of imposition of tax on
23 alternative fuels not otherwise taxed at the point of
24 imposition; providing that propane used in a motor vehicle is

1 subject to the tax; requiring alternative-fuel bulk end users,
2 providers of alternative fuels and retailers of alternative
3 fuels to be licensed; establishing bonding requirements for
4 alternative-fuel bulk end users, providers of alternative
5 fuels and retailers of alternative fuels; establishing due
6 dates for returns and payments of tax on alternative fuels;
7 and specifying effective dates for amendments.

8 *Be it enacted by the Legislature of West Virginia:*

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

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

16 PART I. GENERAL PROVISIONS.

17 **§11-14C-2. Definitions.**

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

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

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

24 (B) Using land for breeding and management of farm livestock

1 including dairy, apiary, equine or poultry husbandry; and

2 (C) Using land for the practice of horticulture including the
3 growing of Christmas trees, orchards and nursery stock.
4 Agricultural purposes do not include commercial forestry, growing
5 of timber for commercial purposes or other activity that normally
6 would not be included in subdivision (A), (B) or (C) of this
7 definition.

8 (2) "Aircraft" includes any airplane or helicopter.

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

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

24 (5) "Alternative-fuel bulk end user" means a person who

1 maintains storage facilities for alternative fuel and uses part or
2 all of the stored fuel to operate a motor vehicle.

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

1 for such lessee or tenant.

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

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

20 (9) "Assessment" means a written determination by the
21 commissioner of the amount of taxes owed by a taxpayer.

22 (10) "Aviation fuel" means aviation gasoline or aviation jet
23 fuel.

24 (11) "Aviation gasoline" means motor fuel designed for use in

1 the operation of aircraft other than jet aircraft and sold or used
2 for that purpose.

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

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

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

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

20 (16) "Blending" means the mixing of one or more petroleum
21 products, with or without another product, regardless of the
22 original character of the product blended, if the product obtained
23 by the blending is capable of use in the generation of power for
24 the propulsion of a motor vehicle, an airplane or a marine vessel.

1 Blending does not include mixing that occurs in the process of
2 refining by the original refiner of crude petroleum or the blending
3 of products known as lubricating oil in the production of
4 lubricating oils and greases.

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

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

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

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

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

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

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

24 (20) "Bulk transfer/terminal system" means the motor fuel

1 distribution system consisting of refineries, pipelines, marine
2 vessels and terminals. Motor fuel in a refinery, a pipeline, a
3 terminal or a marine vessel transporting motor fuel to a refinery
4 or terminal is in the bulk transfer/terminal system. Motor fuel in
5 a motor fuel storage facility including, but not limited to, a bulk
6 plant that is not part of a refinery or terminal, in the motor fuel
7 supply tank of an engine or motor vehicle, in a marine vessel
8 transporting motor fuel to a motor fuel storage facility that is
9 not in the bulk transfer/terminal system, or in a tank car, rail
10 car, trailer, truck or other equipment suitable for ground
11 transportation is not in the bulk transfer/terminal system.

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

15 (22) "Code" means the Code of West Virginia, 1931, as amended.

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

19 (24) "Commissioner" or "Tax Commissioner" means the West
20 Virginia State Tax Commissioner or his or her delegate.

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

1 (26) "Corporate or partnership officer" means an officer or
2 director of a corporation, partner of a partnership or member of a
3 limited liability company who as an officer, director, partner or
4 member is under a duty to perform on behalf of the corporation,
5 partnership or limited liability company, the tax collection,
6 accounting or remitting obligations.

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

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

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

21 (30) "Destination state" means the state, territory or foreign
22 country to which motor fuel is directed for delivery into a storage
23 facility, a receptacle, a container or a type of transportation
24 equipment for the purpose of resale or use. The term does not

1 include a tribal reservation of a recognized Native American tribe.

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

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

10 (33) "Diversion" means transporting motor fuel outside a
11 reasonably direct route from the source to the destination state.

12 (34) "Division" or "State Tax Division" means the Tax Division
13 of the West Virginia Department of Revenue.

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

17 (36) "End seller" means the person who sells motor fuel to the
18 ultimate user of the motor fuel.

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

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

1 of motor fuel delivered out-of-state by or for the purchaser.

2 (39) "Fuel" means motor fuel.

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

6 (41) "Fuel supply tank" means a receptacle on a motor vehicle
7 from which motor fuel is supplied for the propulsion of the motor
8 vehicle.

9 (42) "Gallon" means a unit of liquid measure as customarily
10 used in the United States containing two hundred thirty-one cubic
11 inches by volume and expresses the volume at 60 degrees Fahrenheit.

12 (43) "Gasohol" means a blended motor fuel composed of gasoline
13 and motor fuel alcohol.

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

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

1 time of the removal or sale.

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

7 (47) "Gross gallons" means the total measured product,
8 exclusive of any temperature or pressure adjustments,
9 considerations or deductions, in U. S. gallons.

10 (48) "Governmental entity" means this state or a political
11 subdivision thereof or the United States or its commissioners,
12 agencies and instrumentalities.

13 (49) "Heating oil" means any combustible liquid, including,
14 but not limited to, #1 fuel oil, #2 dyed fuel oil and kerosene that
15 is burned in a boiler, furnace or stove for heating or industrial
16 processing purposes.

17 (50) "Highway" means every way or place of whatever nature
18 open to the use of the public for purposes of vehicular travel in
19 this state including the streets and alleys in towns and cities.

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

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

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

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

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

19 (56) "Invoiced gallons" means the gallons actually billed on
20 an invoice for payment.

21 (57) "Licensee" means a person licensed by the commissioner
22 pursuant to section ten of this article.

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

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

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

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

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

20 (63) "Motor vehicle" means automobiles, motor carriers, motor
21 trucks, motorcycles and all other vehicles or equipment, engines or
22 machines which are operated or propelled by combustion of motor
23 fuel.

24 (64) "Net gallons" means the amount of motor fuel measured in

1 gallons when adjusted to a temperature of sixty degrees Fahrenheit
2 and a pressure of fourteen and seven-tenths pounds pressure per
3 square inch.

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

17 (66) "Person" means an individual, firm, cooperative,
18 association, corporation, limited liability corporation, estate,
19 guardian, executor, administrator, trust, business trust,
20 syndicate, partnership, limited partnership, copartnership,
21 organization, limited liability partnership, joint venture,
22 receiver and trustee in bankruptcy. "Person" also means a club,
23 society or other group or combination acting as a unit, a public
24 body including, but not limited to, this state and any other state

1 and an agency, commissioner, institution, political subdivision or
2 instrumentality of this state or any other state and, also, an
3 officer, employee or member of any of the foregoing who, as an
4 officer, employee or member, is under a duty to perform or is
5 responsible for the performance of an act prescribed by the
6 provisions of this article.

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

14 (68) "Principal" means:

15 (A) If a partnership, all its partners;

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

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

19 (D) An individual.

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

22 (70) "Provider of alternative fuel" means a person who does
23 one or more of the following:

24 (A) Acquires alternative fuel for sale or delivery to an

1 alternative-fuel bulk end user or an alternative-fuel retailer;

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

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

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

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

20 (72) "Railroad locomotive" means diesel-powered equipment or
21 machinery that rides on railroad rails and includes a switching
22 engine.

23 (73) "Receive" means acquisition of ownership or possession of
24 motor fuel.

1 (74) "Refiner" means a person who owns, operates or otherwise
2 controls a refinery.

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

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

12 (77) "Retailer" means a person who sells motor fuel at retail
13 or dispenses motor fuel at a retail location.

14 (78) "Retailer of alternative fuel" means a person who
15 maintains storage facilities, including alternative-fuel vehicle
16 commercial refueling infrastructure, for alternative fuel and who
17 sells the fuel at retail or dispenses the fuel at a retail location
18 to operate a motor vehicle.

19 (79) "Special fuel" means a gas or liquid, other than
20 gasoline, used or suitable for use as motor fuel in an internal
21 combustion engine or motor to propel or operate any form of
22 vehicle, machine, or mechanical contrivance and includes products
23 commonly known as natural or casing-head gasoline, diesel fuel,
24 dyed diesel fuel, biodiesel fuel, transmix, methanol, ethanol,

1 methanol fuel, M100, ethanol fuel, E100, ethanol fuel blend, E85
2 and any fuel mixture that contains eighty-five percent or more
3 alcohol by volume when combined with gasoline or other fuels and
4 liquid fuel derived from coal through the Fischer-Tropsch process.
5 "Special fuel" does not include alternative fuel or any petroleum
6 product or chemical compound such as alcohol, industrial solvent,
7 heavy furnace oil or lubricant, unless blended in or sold for use
8 as motor fuel in an internal combustion engine.

9 (80) "State" or "this state" means the State of West Virginia.

10 (81) "Supplier" means a person that is:

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

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

15 (C) One of the following:

16 (i) A position holder in motor fuel in a terminal or refinery
17 in this state and may concurrently be a position holder in motor
18 fuel in another state; or

19 (ii) A person who receives motor fuel in this state pursuant
20 to a two-party exchange.

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

24 (82) "Tax" or "this tax" is the motor fuel excise tax imposed

1 by this article and includes within its meaning interest and
2 additions to tax and penalties unless the context requires a more
3 limited meaning.

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

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

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

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

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

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

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

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

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

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

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

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

17 **§11-14C-5. Taxes levied; rate.**

18 (a) There is hereby levied on all motor fuel an excise tax
19 composed of a flat rate equal to \$.205 per invoiced gallon and, on
20 alternative fuel, on each gallon equivalent, plus a variable
21 component comprised of:

22 (1) On motor fuel other than alternative fuel, either the tax
23 imposed by section eighteen-b, article fifteen of this chapter or
24 the tax imposed under section thirteen-a, article fifteen-a of this

1 chapter, as applicable: *Provided*, That the motor fuel excise tax
2 shall take effect January 1, 2004: *Provided, however*, That the
3 variable component shall be equal to five percent of the average
4 wholesale price of the motor fuel: *Provided further*, That the
5 average wholesale price shall be no less than \$.97 per invoiced
6 gallon and is computed as hereinafter prescribed in this section:
7 *And provided further*, That on and after January 1, 2010, the
8 average wholesale price shall be no less than \$2.34 per invoiced
9 gallon and is computed as hereinafter prescribed in this section;
10 and

11 (2) On alternative fuel, either the tax imposed by section
12 eighteen-b, article fifteen of this chapter or the tax imposed
13 under section thirteen-a, article fifteen-a of this chapter, as
14 applicable. The tax on alternative fuel takes effect on January 1,
15 2014, with a variable component equal to five percent of the
16 average wholesale price of the alternative fuel.

17 (b) *Determination of average wholesale price.* -

18 (1) To simplify determining the average wholesale price of all
19 motor fuel, the Tax Commissioner shall, effective with the period
20 beginning the first day of the month of the effective date of the
21 tax and each January 1 thereafter, determine the average wholesale
22 price of motor fuel for each annual period on the basis of sales
23 data gathered for the preceding period of July 1 through October
24 31. Notification of the average wholesale price of motor fuel

1 shall be given by the Tax Commissioner at least thirty days in
2 advance of each January 1 by filing notice of the average wholesale
3 price in the State Register and by other means as the Tax
4 Commissioner considers reasonable.

5 (2) The "average wholesale price" means the single, statewide
6 average per gallon wholesale price, rounded to the third decimal
7 (thousandth of a cent), exclusive of state and federal excise taxes
8 on each gallon of motor fuel or on each gallon equivalent of
9 alternative fuel as determined by the Tax Commissioner from
10 information furnished by suppliers, importers and distributors of
11 motor fuel and alternative-fuel providers, alternative-fuel bulk
12 end users and retailers of alternative fuel in this state, or other
13 information regarding wholesale selling prices as the Tax
14 Commissioner may gather or a combination of information. In no
15 event shall the average wholesale price be determined to be less
16 than \$.97 per gallon of motor fuel. For calendar year 2009, the
17 average wholesale price of motor fuel shall not exceed the average
18 wholesale price of motor fuel for calendar year 2008 as determined
19 pursuant to the notice filed by the Tax Commissioner with the
20 Secretary of State on November 21, 2007, and published in the State
21 Register on November 30, 2007. On and after January 1, 2010, in no
22 event shall the average wholesale price be determined to be less
23 than \$2.34 per gallon of motor fuel. On and after January 1, 2011,
24 the average wholesale price shall not vary by more than ten percent

1 from the average wholesale price of motor fuel as determined by the
2 Tax Commissioner for the previous calendar year. Any limitation on
3 the average wholesale price of motor fuel contained in this
4 subsection shall not be applicable to alternative fuel.

5 (3) All actions of the Tax Commissioner in acquiring data
6 necessary to establish and determine the average wholesale price of
7 motor fuel, in providing notification of his or her determination
8 prior to the effective date of a change in rate, and in
9 establishing and determining the average wholesale price of motor
10 fuel may be made by the Tax Commissioner without compliance with
11 the provisions of article three, chapter twenty-nine-a of this
12 code.

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

17 (c) There is hereby levied a floorstocks tax on motor fuel
18 held in storage outside the bulk transfer/terminal system as of the
19 close of the business day preceding January 1, 2004, and upon which
20 the tax levied by this section has not been paid. For the purposes
21 of this section, "close of the business day" means the time at
22 which the last transaction has occurred for that day. The
23 floorstocks tax is payable by the person in possession of the motor
24 fuel on January 1, 2004. The amount of the floorstocks tax on

1 motor fuel is equal to the sum of the tax rate specified in
2 subsection (a) of this section multiplied by the gallons in storage
3 as of the close of the business day preceding January 1, 2004.

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

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

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

12 (C) Remit the tax levied under this section no later than June
13 1, 2004.

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

17 (3) In the event the tax due is paid to the commissioner after
18 June 1, 2004, the person remitting the tax shall pay, in addition
19 to the tax, a penalty in the amount of five percent of the tax
20 liability due.

21 (4) In determining the amount of floorstocks tax due under
22 this section, the amount of motor fuel in dead storage may be
23 excluded. There are two methods for calculating the amount of
24 motor fuel in dead storage:

1 (A) If the tank has a capacity of less than ten thousand
2 gallons, the amount of motor fuel in dead storage is two hundred
3 gallons and if the tank has a capacity of ten thousand gallons or
4 more, the amount of motor fuel in dead storage is four hundred
5 gallons; or

6 (B) Use the manufacturer's conversion table for the tank after
7 measuring the number of inches between the bottom of the tank and
8 the bottom of the mouth of the drainpipe: *Provided*, That the
9 distance between the bottom of the tank and the bottom of the mouth
10 of the draw pipe is presumed to be six inches.

11 (d) Every licensee who, on the effective date of any rate
12 change, has in inventory any motor fuel upon which the tax or any
13 portion thereof has been previously paid shall take a physical
14 inventory and file a report thereof with the commissioner, in the
15 format as required by the commissioner, within thirty days after
16 the effective date of the rate change, and shall pay to the
17 commissioner at the time of filing the report any additional tax
18 due under the increased rate.

19 (e) The Tax Commissioner shall determine by January 1, 2014,
20 the gasoline gallon equivalent for each alternative fuel by filing
21 a notice of the gasoline gallon equivalent in the State Register
22 and by other means that the Tax Commissioner considers reasonable.
23 The Tax Commissioner may redetermine the gasoline gallon equivalent
24 for each alternative fuel by filing a notice of the gasoline gallon

1 equivalent in the State Register at least thirty days in advance of
2 January 1 for the next succeeding tax year. For purposes of this
3 notice, the Tax Commissioner may adopt or incorporate by reference
4 provisions of the National Institute of Standards and Technology,
5 United States Department of Commerce, the Internal Revenue Code,
6 United States Treasury Regulations, the Internal Revenue Service
7 publications or guidelines or other publications or guidelines
8 which may be useful in determining, setting or describing the
9 gasoline gallon equivalent for each alternative fuel used as motor
10 fuel.

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

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

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

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

24 (2) If not taxed at the point of imposition described in

1 subdivision (1) of this subsection, then at the time alternative
2 fuel is sold for use in a highway vehicle;

3 (3) If not taxed at the point of imposition described in
4 subdivision (1) or at the point of imposition described in
5 subdivision (2) of this subsection, then at the time alternative
6 fuel is used in a highway vehicle.

7 **§11-14C-9. Exemptions from tax; claiming refunds of tax.**

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

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

20 (2) Sales of aviation fuel;

21 (3) Sales of dyed special fuel; and

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

23 (b) *Per se exemptions from variable component of tax.* - Sales
24 of motor fuel to the following are exempt per se from the variable

1 component of the tax levied by section five of this article and the
2 variable component may not be paid at the rack:

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

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

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

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

24 (3) A municipal government or any agency thereof;

1 (4) A county board of education;

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

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

17 (7) All invoiced gallons of motor fuel purchased by a licensed
18 exporter and subsequently exported from this state to any other
19 state or nation: *Provided*, That the exporter has paid the
20 applicable motor fuel tax to the destination state or nation prior
21 to claiming this refund or the exporter has reported to the
22 destination state or nation that the motor fuel was sold in a
23 transaction not subject to tax in that state or nation. A refund
24 may not be granted on motor fuel which is transported and delivered

1 outside this state in the motor fuel supply tank of a highway
2 vehicle;

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

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

7 (10) All gallons of fuel used for boilers;

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

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

12 (13) All gallons of motor fuel sold for use or used as a motor
13 fuel for commercial watercraft;

14 (14) All gallons of motor fuel sold for use or consumed in
15 railroad diesel locomotives;

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

19 (16) All gallons of motor fuel purchased in quantities of
20 twenty-five gallons or more and used to power a power take-off unit
21 on a motor vehicle. When a motor vehicle with auxiliary equipment
22 uses motor fuel and there is no auxiliary motor for the equipment
23 or separate tank for a motor, the person claiming the refund may
24 present to the Tax Commissioner a statement of his or her claim and

1 is allowed a refund for motor fuel used in operating a power
2 take-off unit on a cement mixer truck or garbage truck equal to
3 twenty-five percent of the tax levied by this article paid on all
4 motor fuel used in such a truck;

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

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

22 (d) *Refundable exemptions from variable rate component of tax.*
23 - Any of the following persons may claim an exemption from the
24 variable rate component of the tax levied by section five of this

1 article on the purchase and use of motor fuel by first paying the
2 tax levied by this article and then applying to the Tax
3 Commissioner for a refund.

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

11 (2) This state and its institutions;

12 (3) A county government or unit or agency thereof;

13 (4) A municipal government or agency thereof;

14 (5) A county board of education;

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

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

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

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

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

18 PART 3. MOTOR FUEL LICENSING.

19 **§11-14C-10. Persons required to be licensed.**

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

- 22 (1) A supplier which includes a refiner;
23 (2) A permissive supplier;
24 (3) An importer;

- 1 (4) An exporter;
- 2 (5) A terminal operator;
- 3 (6) A blender;
- 4 (7) A motor fuel transporter;
- 5 (8) A distributor;
- 6 (9) A producer/manufacturer;
- 7 (10) An alternative-fuel bulk end user;
- 8 (11) A provider of alternative fuel; or
- 9 (12) A retailer of alternative fuel.

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

13 **§11-14C-13. Bond requirements.**

14 (a) Along with an application for a license required by
15 section eleven of this article, either a cash bond or a continuous
16 surety bond in the amount or amounts specified in this section
17 shall be filed. If a person has filed applications for licenses
18 for more than one activity, the commissioner may combine the amount
19 of the cash bond or continuous surety bond required for each
20 licensed activity into one amount that shall be no less than the
21 largest amount required for any of those activities for which the
22 license applications are filed. If a continuous surety bond is
23 filed, an annual notice of renewal shall be filed thereafter. If
24 the continuous surety bond includes the requirements that the

1 commissioner is to be notified of cancellation at least sixty days
2 prior to the continuous surety bond being canceled, an annual
3 notice of renewal is not required. The bond, whether a cash bond
4 or a continuous surety bond, is conditioned upon compliance with
5 the requirements of this article, payable to this state and in the
6 form required by the commissioner. The amount of the bond is as
7 follows:

8 (1) For a supplier license, the amount shall be a minimum of
9 \$100,000 or an amount equal to three months' tax liability,
10 whichever is greater, but shall not exceed \$2 million: When
11 required by the commissioner to file a cash bond or a continuous
12 surety bond in an additional amount, the licensee shall comply with
13 the commissioner's notification within thirty days after receiving
14 that notification;

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

22 (3) For a terminal operator license, the amount shall be a
23 minimum of \$100,000 or an amount equal to three months' tax
24 liability, whichever is greater, but shall not exceed \$2 million.

1 When required by the commissioner to file a cash bond or a
2 continuous surety bond in an additional amount, the licensee shall
3 comply with the commissioner's notification within thirty days
4 after receiving that notification;

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

19 (5) For an importer license for a person that imports by
20 transport vehicle or another means outside the bulk
21 transfer/terminal system motor fuel removed from a terminal located
22 in another state in which: (A) The state from which the motor fuel
23 is imported requires the seller of the motor fuel to collect a
24 motor fuel excise tax on the removal either at that state's rate or

1 the rate of the destination state; or (B) the seller of the motor
2 fuel is a permissive supplier, the amount shall be a minimum of
3 \$2,000 or an amount equal to three months' tax liability, whichever
4 is greater, but shall not exceed \$300,000. When required by the
5 commissioner to file a cash bond or a continuous surety bond in an
6 additional amount, the licensee shall comply with the
7 commissioner's notification within thirty days after receiving that
8 notification;

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

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

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

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

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

22 (11) For a motor fuel transporter license, there is no bond;

23 (12) For a producer/manufacturer license, there is no bond.

24 If the taxpayer fails to file a return or remit tax due under this

1 article, the commissioner may require a cash bond or a continuous
2 surety bond in an amount to be determined by the commissioner.
3 When required by the commissioner to file a cash bond or a
4 continuous surety bond, the licensee shall comply with the
5 commissioner's notification within thirty days after receiving that
6 notification;

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

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

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

3 (B) Proof of \$2,500,000 net worth constitutes financial
4 responsibility in lieu of posting fifty percent of the required
5 bond; and

6 (C) Proof of \$1,250,000 net worth constitutes financial
7 responsibility in lieu of posting twenty-five percent of the
8 required bond. Net worth is calculated on a business, not
9 individual basis.

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

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

1 Office of Tax Appeals of the petition.

2 (b) The surety must be authorized under article nineteen,
3 chapter thirty-three of this code to engage in business of
4 transacting surety insurance within this state. The cash bond and
5 the continuous surety bond are conditioned upon faithful compliance
6 with the provisions of this article, including the filing of the
7 returns and payment of all tax prescribed by this article. The
8 cash bond and the continuous surety bond shall be approved by the
9 commissioner as to sufficiency and form and shall indemnify the
10 state against loss arising from the failure of the taxpayer to pay,
11 for any cause whatever, the motor fuel excise tax levied by this
12 article.

13 (c) Surety on a continuous surety bond furnished hereunder is
14 relieved, released and discharged from all liability accruing on
15 the bond after the expiration of sixty days from the date the
16 surety shall have lodged, by certified mail, with the commissioner,
17 a written request to be discharged. Discharge from the continuous
18 surety bond does not relieve, release or discharge the surety from
19 liability already accrued or which will accrue before the
20 expiration of the sixty-day period. Whenever a surety seeks
21 discharge as herein provided, it is the duty of the principal of
22 the bond to supply the commissioner with another continuous surety
23 bond or a cash bond prior to the expiration of the original bond.
24 Failure to provide a new continuous surety bond or a cash bond

1 shall result in the commissioner canceling each license and
2 registration previously issued to the person.

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

20 PART 4. PAYMENT AND REPORTING OF TAX ON MOTOR FUEL.

21 **§11-14C-19. When tax return and payment are due.**

22 (a) The tax levied by this article shall be paid by each
23 taxpayer on or before the last day of the calendar month by check,
24 bank draft or money order payable to the commissioner for the

1 amount of tax due, if any, for the preceding month. The
2 commissioner may require all or certain taxpayers to file tax
3 returns and payments electronically. The return required by the
4 commissioner shall accompany the payment of tax. If no tax is due,
5 the return required by the commissioner shall be completed and
6 filed before the last day of the calendar month for the preceding
7 month.

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

- 10 (1) A terminal operator;
- 11 (2) A supplier;
- 12 (3) An importer;
- 13 (4) A blender;
- 14 (5) A person incurring liability under section eight of this
15 article for the backup tax on motor fuel;
- 16 (6) A permissive supplier;
- 17 (7) A motor fuel transporter;
- 18 (8) An exporter; and
- 19 (9) A producer/manufacturer.

20 (c) For the calendar years beginning on or after January 1,
21 2014, the tax levied by this article on alternative fuel that is
22 subject to tax at the point of imposition prescribed in section
23 six-a of this article shall be paid by the alternative-fuel bulk
24 end user, provider of alternative fuel or retailer of alternative

1 fuel on or before January 31 of every year, unless determined by
2 the Tax Commissioner that payment must be made more frequently, by
3 check, bank draft or money order payable to the Tax Commissioner
4 for the amount of tax due. The Tax Commissioner may require all or
5 certain taxpayers to file tax returns and payments electronically.
6 The return required by the Tax Commissioner shall accompany the
7 payment of tax. If no tax is due, the return required by the Tax
8 Commissioner shall be completed and filed on or before January 31.

9 **ARTICLE 15. CONSUMER SALES AND SERVICE TAX.**

10 **§11-15-18b. Tax on motor fuel.**

11 (a) *General.* - All sales of motor fuel and alternative fuel
12 subject to the flat rate of the tax imposed by section five,
13 article fourteen-c of this chapter, are subject to the tax imposed
14 by this article and comprises the variable component of the tax
15 imposed by section five, article fourteen-c of this chapter and is
16 collected and remitted at the time the tax imposed by said section
17 is remitted. Sales of motor fuel and alternative fuel upon which
18 the tax imposed by this article has been paid is not again taxed
19 under the provisions of this article. This section means that all
20 gallons of motor fuel and equivalent gallons of alternative fuel
21 sold and delivered or delivered in this state are taxed one time.

22 (b) *Measure of tax.* - The measure of tax imposed by this
23 article is as follows:

24 On sales of motor fuel, the average wholesale price as defined

1 and determined in section five, article fourteen-c of this chapter.
2 For purposes of maintaining revenue for highways, and recognizing
3 that the tax imposed by this article is generally imposed on gross
4 proceeds from sales to ultimate consumers, whereas the tax on motor
5 fuel herein is imposed on the average wholesale price of the motor
6 fuel; in no case, for the purposes of taxation under this article,
7 may the average wholesale price be determined to be less than \$.97
8 per gallon of motor fuel for all gallons of motor fuel sold during
9 the reporting period, notwithstanding any provision of this article
10 to the contrary. On and after January 1, 2010, for the purpose of
11 taxation under this article, in no case may the average wholesale
12 price be determined to be less than \$2.34 per gallon of motor fuel
13 for all gallons of motor fuel sold during the reporting period
14 notwithstanding any provision of this article to the contrary. Any
15 limitation on the average wholesale price of motor fuel contained
16 in this subsection shall not be applicable to alternative fuel.

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

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

1 (d) *Tax return and tax due.* -

2 (1) The tax imposed by this article on sales of motor fuel
3 shall be paid by each taxpayer on or before the last day of the
4 calendar month by check, bank draft, certified check or money order
5 payable to the Tax Commissioner for the amount of tax due for the
6 preceding month notwithstanding any provision of this article to
7 the contrary. The commissioner may require all or certain
8 taxpayers to file tax returns and payments electronically. The
9 return required by the commissioner shall accompany the payment of
10 tax. If no tax is due, the return required by the commissioner
11 shall be completed and filed on or before the last day of the
12 month.

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

18 (e) *Compliance.* - To facilitate ease of administration and
19 compliance by taxpayers, the Tax Commissioner shall require persons
20 liable for the tax imposed by this article on sales of motor fuel
21 to file a combined return and make a combined payment of the tax
22 due under this article on sales of motor fuel and the tax due under
23 article fourteen-c of this chapter on motor fuel. In order to
24 encourage use of a combined return each month and the making of a

1 single payment each month for both taxes, the due date of the
2 return and tax due under article fourteen-c of this chapter is the
3 last day of each month notwithstanding any provision in said
4 article to the contrary. The Tax Commissioner may prescribe
5 reporting and payment requirements for tax due under this article
6 on alternative fuel which accommodate the due dates and
7 requirements prescribed in this article and article fourteen-c of
8 this chapter, either under a separate return and payment or a
9 combined return and payment, within the discretion of the Tax
10 Commissioner.

11 (f) *Dedication of tax.* - All tax collected under the
12 provisions of this section, after deducting the amount of refunds
13 lawfully paid, shall be deposited in the road fund in the State
14 Treasurer's office and used only for the purpose of construction,
15 reconstruction, maintenance and repair of highways and payment of
16 principal and interest on state bonds issued for highway purposes.
17 Notwithstanding any provision to the contrary, tax collected on the
18 sale of aviation fuel after deducting the amount of refunds
19 lawfully paid shall be deposited in the State Treasurer's office
20 and transferred to the State Aeronautical Commission to be used for
21 the purpose of matching federal funds available for the
22 reconstruction, maintenance and repair of public airports and
23 airport runways.

24 (g) *Construction.* - This section does not tax a sale of motor

1 fuel which this state is prohibited from taxing under the
2 constitution of this state or the constitution or laws of the
3 United States.

4 (h) *Effective date.* - The provisions of this section take
5 effect on January 1, 2004. The provisions of this section enacted
6 during the 2007 legislative session take effect on January 1,
7 2008. The provisions of this section enacted during the 2013 regular
8 legislative session take effect on January 1, 2014.

9 **ARTICLE 15A. USE TAX.**

10 **§11-15A-13a. Tax on motor fuel effective January 1, 2004.**

11 (a) *Imposition of tax.* -

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

23 (2) *On purchases out-of-state subject to motor fuel tax.* -
24 Effective January 1, 2004, an excise tax is imposed on the

1 importation into this state of motor fuel purchased outside this
2 state when the purchase is subject to the flat rate of the tax
3 imposed by section five, article fourteen-c of this chapter. The
4 rate of the tax due under this article shall not be less than five
5 percent of the average wholesale price of the motor fuel, as
6 determined in accordance with said section five, article
7 fourteen-c. The motor fuel subject to the tax imposed by this
8 article comprises the variable component of the tax imposed by
9 section five, article fourteen-c, and shall be collected and
10 remitted by the seller at the time the seller remits the tax
11 imposed by the said section five, article fourteen-c.

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

23 (4) *On use of alternative fuel.* - Effective January 1, 2014,
24 an excise tax is imposed on alternative fuel used within this state

1 which is subject to the flat rate of the tax imposed by section
2 five, article fourteen-c of this chapter. Alternative fuel is
3 subject to the tax imposed by this article and comprises the
4 variable component of the tax imposed by the section five, article
5 fourteen-c of this chapter and shall be collected and remitted at
6 the time the tax imposed by section five, article fourteen-c of
7 this chapter is remitted. The amount of tax due under this article
8 shall not be less than five percent of the average wholesale price
9 of alternative fuel as determined in accordance with section five,
10 article fourteen-c of this chapter.

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

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

22 (1) The total amount of motor fuel used in the operation of
23 the motor carrier within this state is that proportion of the total
24 amount of motor fuel used in a motor carrier's operations within

1 and without this state, that the total number of miles traveled
2 within this state bears to the total number of miles traveled
3 within and without this state.

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

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

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

19 (d) *Return and payment of tax.* -- Tax due under this article
20 on the uses or consumption in this state of motor fuel shall be
21 paid by each taxpayer on or before January 25, April 25, July 25
22 and October 25 of each year, notwithstanding any provision of this
23 article to the contrary, by check, bank draft, certified check or
24 money order, payable to the Tax Commissioner, for the amount of tax

1 due for the preceding quarter. The tax due under this article
2 comprising the variable component of the tax due under article
3 fourteen-c of this chapter is due on the last day of the month.
4 Every taxpayer shall make and file with his or her remittance, a
5 return showing the information the Tax Commissioner requires. The
6 tax due under this article comprising the variable component of the
7 tax due under article fourteen-c of this chapter on alternative
8 fuel, is due and shall be collected and remitted at the time the
9 tax imposed by section five, article fourteen-c of this chapter is
10 due, collected and remitted.

11 (e) *Compliance.* -- To facilitate ease of administration and
12 compliance by taxpayers, the Tax Commissioner shall require motor
13 carriers liable for the taxes imposed by this article on the use of
14 motor fuel in the operation of motor carriers within this state,
15 and the tax imposed by article fourteen-a of this chapter on such
16 gallons of motor fuel, to file a combined return and make a
17 combined payment of the tax due under this article and article
18 fourteen-a of this chapter on the fuel. In order to encourage use
19 of a combined return and the making of a single payment each
20 quarter for both taxes, the due date of the return and tax due
21 under article fourteen-a of this chapter is the last day of
22 January, April, July and October of each calendar year: Provided,
23 That the Tax Commissioner may prescribe reporting and payment
24 requirements for tax due under this article on alternative fuel

1 which accommodate the due dates and requirements prescribed in this
2 article and article fourteen-c of this chapter, either under a
3 separate return and payment or a combined return and payment,
4 within the discretion of the Tax Commissioner.

5 (f) *Dedication of tax to highways.* - Tax collected under the
6 provisions of this section, after deducting the amount of refunds
7 lawfully paid, shall be deposited in the Road Fund in the State
8 Treasurer's office and used only for the purpose of construction,
9 reconstruction, maintenance and repair of highways and payment of
10 principal and interest on state bonds issued for highway purposes.

11 (g) *Construction.* - The tax imposed by this article on the use
12 of motor fuel in this state does not tax motor fuel which the state
13 is prohibited from taxing under the Constitution of this state or
14 the Constitution or laws of the United States.

15 (h) *Effective date.* - The provisions of this section take
16 effect January 1, 2004. The provisions of this section enacted
17 during the 2013 legislative session take effect on January 1, 2014.